HORSE WARRANTY
ON
THE PURCHASE AND SALE
OF
HORSES

FRANCIS HENRY LASCELLES L.L.B.
BARRISTER AT LAW.

Price 2/6.

Hugh Cecil Earl of Lonsdale.

1877.

370 Horse Warranty. On the Purchase and Sale of Horses, with hints as to Methods of Procedure in cases of Dispute. By **Francis Henry Lascelles,** LL.B., of Trinity Hall, Cambridge, and of the Inner Temple, Esquire, Barrister-at-Law.

"Tu qui cæteris cavere didicisti, in Britannia ne ab essedariis decipiaris caveto."—CIC., Ep. Lib., 7 Ep. 6.

London. 1877.

8vo. 93 pp. and 9 pp. of index. M., 7½ in. by 4¾ in. Reeves and Turner.

HORSE WARRANTY.

ON THE

PURCHASE AND SALE OF HORSES,

WITH HINTS AS TO

METHODS OF PROCEDURE

IN

CASES OF DISPUTE.

BY

FRANCIS HENRY LASCELLES, LL.B.,

OF TRINITY HALL, CAMBRIDGE, AND OF THE INNER TEMPLE, ESQUIRE,
BARRISTER-AT-LAW.

"Tu qui cæteris cavere didicisti, in Britannia ne ab essedariis decipiaris caveto."—
Cic., Ep. Lib., 7 *Ep.* 6.

LONDON:
REEVES & TURNER, 100, CHANCERY LANE.
BRIGHTON
J. BEAL & CO., EAST STREET.

1877.

PRINTED AT THE
"SUSSEX DAILY NEWS" OFFICE,
BRIGHTON.

PREFACE.

PROFESSIONAL circumstances have required me during the last few years to see and hear a great deal of litigation in what are called "Horse Cases." In that experience I have known many transactions in which the aggrieved party, on appealing to Law, has not been successful; and where the want of success has been attributed to defects in the tribunal appealed to, whereas, in fact, the blame should have been laid on the carelessness or ignorance of the complainant in the transaction under dispute. For this reason, partly, I venture to submit the following pages to the public. They are not intended for a Law Book, nor will they supply the place of business habits, or turn a careless deal or bargain into a satisfactory one; but I hope they will show those who propose to buy or sell a horse some of the rules and safeguards to be adopted to avoid litigation, if possible, or to ensure success if litigation must take place.

The ownership of a good many horses, both in India and in this country, must be my apology for some statements which are the result of experience.

TEMPLE, *May 1st, 1877.*

HORSE WARRANTY.

CHAPTER I.

CONTENTS:—WARRANTY OF A HORSE, WHAT IT IS. EXAMPLE OF WARRANTIES OF DIFFERENT KINDS—GENERAL, QUALIFIED, LIMITED, SPECIAL. DISTINCTION BETWEEN WARRANTY AND REPRESENTATION. EFFECT OF A WARRANTY BY AN AGENT OR SERVANT OF A PRIVATE PERSON, OR OF A HORSE DEALER. FRAUD. SALE OF HORSE "WITH ALL FAULTS." HOW TO PROCEED IF THERE HAS BEEN A BREACH OF WARRANTY.

MR. YOUATT, in his book on the Horse, says: "A man should have a more perfect knowledge of horses than falls to the lot of most men, and a perfect knowledge of the vendor, too, who ventures to buy a horse without a Warranty," a statement which experience shows to be very true.

And the reasons for this are clear. As the horse is the most useful of quadrupeds to man, so in proportion are the varied qualities necessary to its utility. To

perform with ease the work required from it, a horse should be in good health, and free from imperfection in wind and limb; it should be docile and good tempered, and do its work quietly and steadily, and yet a horse may be bought perfect to all outward appearance, and still be found wanting, not only in one, but in all these qualities.

It is the requirements we ask from a horse which oblige us also to ask for a warranty or undertaking that it has these requirements. A cow may be lame or blind, or, indeed, vicious, but still answer the purposes of a cow very well, and give milk all her life, and be good beef afterwards; the only qualification necessary being that she should be a good milker, and this can be ascertained pretty well by the appearance of the udder or other marks known to milkmen and graziers.

No outward appearances will betray many defects and imperfections in a horse. The best looking are often the veriest brutes, and the dullest and most stupid, to all appearance, turn out to be the worst biters, or kickers, or jibbers in harness.

The uninitiated in horse-flesh, then, will be wise if in buying a horse they use their best endeavours to obtain a warranty. What is a Warranty? It may be said to be a guarantee or undertaking by the seller to the buyer that the article sold does in reality correspond to the description given of it by the seller before and at the time of sale; and such guarantee or undertaking may be made and given either in writing or by word of mouth.

A written form of warranty should be in some such words as these :—

"Received of Mr. Brown, of Polegate, the sum of £40 for a bay gelding, aged—warranted sound, free from vice, and quiet to ride and drive.

"JOHN SMITH.

"Lewes, Jan. 31st, 1877."

Such a warranty need not be written at the time the warranty is given, in fact a written warranty is rarely penned until the money is paid, and is but a memorandum or reduction into writing of the terms of a preceding warranty. Such writing then becomes the warranty. It need not be stamped with an agreement stamp, it must have a receipt stamp (see *Browne* v. *Frye*, in 2 Camp, 407, and *Skrine* v. *Elmore*, *ibid*) but requires no other. If the warranty is contained in a separate document from the written receipt, no stamp whatever is required on the warranty. Where a receipt in writing is taken for the price of the horse and the writing contains no warranty it was held in the case of *Allen* v. *Pink* (4 M. & W., 140) that the warranty could be proved by parol evidence.

There are certain things connected with a warranty to which the reader's attention should be particularly drawn, whether the warranty be in writing as above, or otherwise.

Let us consider them in order.

First, that everything said respecting the horse or article sold, every statement as to its soundness or other qualities which the seller may make, and which the buyer relies on as a warranty, must be made be-

fore the bargain is closed, or, as lawyers would say, before the contract is complete. A little consideration will show the sense of this : the buyer has been induced to buy the horse by something the seller has said before he sold it ; such saying may be the warranty the seller gave, or it may be a representation only, but at all events it was something *before* the actual sale. Anything the seller may have said after the sale is completed could not have induced the purchaser to buy, and is of no use to the buyer if he goes to law. It frequently happens that persons (not lawyers) hardly consider this, they quote all the seller or dealer says as he buttons up the cheque in his pocket, as if that could in any way be a warranty. Some dealers and horse-sellers say all sorts of things when copeing or selling a horse, but they confine themselves to puff, and never commit themselves to any statement of a fact as to the subject of the deal. It is not until the bargain is entirely over that they comfort the buyer by statements which he fondly looks upon as warranties, but which cannot be so considered. Care then should be taken by the buyer to have every statement he proposes to rely on made distinctly before the bargain is closed. It is sometimes difficult to say when this happens. Paying the money is not always the completion of the contract in a legal sense. There are many ways by which the final settlement is arrived at. In Wales and in many Western fairs, no bargain is considered final until both parties strike or clasp one another's hands firmly over their chaffer, and to a jury in those parts

evidence of such a hand-shake would be conclusive that that was the moment the transaction became ratified, even supposing the money not to pass for a month, and everything said respecting the horse bought and sold up to that moment would be evidence for a Court of Law; whereas any statements subsequent to such hand-shaking would probably be disregarded. In an action brought by a farmer against a cattle dealer, to recover the value of three oxen sold by the dealer to the farmer, and warranted free from disease, the fact to be ascertained was when the contract was complete. The cattle were sold in a fair, and no proof given of any previous complaint. They became afterwards afflicted with foot and mouth disease, and it was proved that they were put into a field on the afternoon of the fair with some Irish cattle, amongst whom that disease broke out. The plaintiff contended that as he paid for the beasts in the evening, not having time to look after them until then, that the warranty commenced from the time of payment, but, as it came out incidentally, that he had about twelve o'clock taken a pair of scissors out of his pocket and had marked the cattle by cutting marks on their hair, the jury stopped the case, and intimated that they considered that was the moment when the contract was completed, and found for the defendant. It is not easy to lay down when in every case the bargain is closed, but the principle is the same in all cases, and the rule should not be forgotten, which is this: that it is statements or writings made before the actual sale which are of

value to the complaining party, and that anything said or written after the sale is of comparatively little use.

Again, it may be noted, that in the example of a written warranty, given above, the words "warranted" and "sound" are used. These words are well known to dealers, and by a series of legal decisions have been given a distinct technical meaning. Still, they are not absolutely necessary, and as will be shown, a seller may warrant a horse to be sound without using them. Nay, a seller may never use the word "warrant" and even say, "I do not warrant, and will not," and yet be liable to an action for breach of warranty, if by saying so he misleads the buyer and induces him to buy, as if one said "I will not warrant the horse, but you may depend upon it he is sound." This is a warranty, and if the buyer can show he relied on this statement, and afterwards the horse turned out to have been faulty at the time of sale, and the seller knew it, the buyer could recover as for a breach of warranty.

Mr. Justice Buller, says, in *Pasley* v. *Freeman*, (2 Sm. L. C., 7th edition, p. 72) "It was rightly held by Holt, Chief Justice, and has been uniformly adopted ever since, that an affirmation at the time of a sale is a warranty, provided it appear in evidence to have been so intended."

Whether or not a warranty is intended is a fact for the jury to decide, taking into consideration the whole circumstances of the case.

In *Power* v. *Barham* (4 Ad. & Ellis, 473), which was an action for breach of a warranty of pictures, it was proved, amongst other things, that the defendant at the time of sale gave the following bill of parcels: "Four pictures of Venice, Canaletti, £160." The judge left it to the jury upon this and the rest of the evidence whether the defendant had contracted that the pictures were those of the artist named, or whether his name had been used merely as matter of description or intimation of opinion. The jury found for the plaintiff, saying that the bill amounted to a warranty, and it was held, on a motion for a new trial, that the question had been rightly left to the jury, and the verdict was not to be disturbed.

Of Warranties there are several kinds. Warranties may be said to be *general*, as where the seller says, "I warrant the horse," or "The horse is sound;" and in such case all the complainant need do is to prove that the horse was not sound when sold. Whether the seller knew of any unsoundness or not is immaterial, he is bound by the general statement he has made.

A *qualified* warranty is where a seller says, "The horse is sound so far as I know." Here, if the buyer is dissatisfied, he must not only prove that the horse he has bought is unsound, but also that the seller knew it was unsound at the time of the sale.

In *Wood* v. *Smith* (5 M. & R., 124), the seller, in reply to the buyer's question, said of the mare he was selling, "She is sound to the best of my know-

ledge," adding shortly afterwards, "I never warrant; I would not even warrant myself." It was proved that the defendant knew that the mare was unsound. The case was tried at *Nisi Prius*, and afterwards came before the Court in *Banc*, and it was held that this was a qualified warranty—the qualification being the defendant's *knowledge*, which was proved, and that the plaintiff could therefore recover. This is not a satisfactory case, as a precedent, the question turning more on a point in the pleadings than on the general merits.

A warranty is said to be *limited* when the time for which the seller warrants is specified, as where one says, "I will warrant the horse for four days." This is a common form of warranty at repositories and public sales, where the buyer is generally allowed a specified number of days to make his objections to the horse he has bought, and if he fail to do this, as a rule he has no remedy if the horse turn out worthless.

The case *Head* v. *Tattersall* (L. R. 7, Ex. 7) in which a condition of sale was to this effect: "Horses not answering the description must be returned before five o'clock on Wednesday evening next, otherwise the purchaser shall be obliged to keep the lot with all faults," should be perused as bearing upon the doctrine of a sale with a limited condition.

In that case it appears that before the horse was removed from the place of sale, the buyer was told by the person in charge of it that the warranty given was wrong, and at bar it was contended that the buyer's action in taking the horse away after hearing such a

statement waived his right under the warranty; but the Court were unanimously of opinion that a mere loose statement made by the groom in charge of the horse was not tantamount to an explicit notice by the defendant that the warranty was a mistake.

In that case, also, another important question was decided viz.: as to whether the fact that the horse received some injury when in the custody of the buyer deprived the latter of his right to return it. It was held that it did not. Baron Bramwell said, "it was quite true as a general proposition that a buyer cannot return a specific chattel except it be in the same state as when it was bought; but in such a case as the present, the rule must be qualified thus: the buyer must return the horse in the same condition as when he bought it, but subject to any of those incidents to which the horse might be liable either from its inherent nature or from the course of the exercise by the buyer of those rights over it which the contract gave. For example, suppose the horse when standing in the stable strained itself or injured a limb, that would not affect the right of return, although the horse would no longer be exactly in the same condition as before."

In *Bywater* v. *Richardson* (1 Ad. & Ellis, 508) a notice painted on a board and fixed in a conspicuous position, and stating that any warranty of horses selling that day at a private sale was to remain in force only until twelve o'clock next day, was construed to mean that the seller was responsible only for such defects as were pointed out before that hour, although the unsoundness

subsequently ascertained was of such a nature as would not be discovered within the twenty-four hours. So again in *Chapman* v. *Gwyther* (1 L. R. Q. B., 164) when a horse was warranted sound for one month, it was held that the complaint of unsoundness must be made within one month of the sale, and the vendor was held not liable for a defect which existed at the time of sale, but was not discovered until more than a month had elapsed.

A large horse dealer for many years never warranted horses, and never meant to do so, but finding that County Court juries would not believe he had not done so, now says, when asked if he warrants a horse, "You may take him as warranted for a week from to-day;" and he finds, although some horses are returned on his hands with a veterinary certificate of unsoundness, yet on the whole he is the gainer by obtaining better prices and avoiding litigation.

There may also be a *special* warranty, as where the parties in buying and selling a horse discuss a certain defect in the animal of which they are cognizant, and the buyer requires a warranty from the seller holding the latter answerable against the effects which might be likely to proceed from the defect; such a warranty would be a *special* one. So also, where the seller wishes to exempt himself from liability in respect of the unsoundness likely to arise from a known defect. On this, see *Margetson* v. *Wright*, post.

If a warranty is reduced to writing, the parties are bound by the writing, the Courts of Law will not

go outside the document, although a written warranty need not be formal, as in the example above; but may be given by a number of letters, or even by a buyer's letters (see *Pickering* v. *Dawson*, 4 Taunton, 785).

In *Stuckley* v. *Bailey* (31 L. J. Exc. 483), the evidence of the contract of the sale of a yacht consisted of a series of letters which were of an ambiguous character in their terms, and it was held that, assuming the assertions in the letters amounted to a warranty of certain parts of the vessel, it was competent to the defendant to prove all the surrounding circumstances and statements of the parties, as well after as before the letters, to show that a warranty was not contemplated between the parties, and by a parity of reasoning it may be said that parol evidence would be admitted to show that a warranty was intended by a number of documents.

In a Sussex County Court, a buyer once proved a warranty in this way—he sent his servant with a cheque and note to the seller, saying if the seller warranted the horse specified as sound he could retain the cheque and send the horse; but, if not, the cheque was to be returned. The seller kept the cheque and sent the horse. The horse was found to be blind, and returned, and though the seller tried to deny the warranty, the buyer succeeded in his action by producing a copy of his letter, which the seller admitted was correct.

A large price is no proof of warranty. Mr. Justice Grose, in the case of *Parkinson* v. *Lee* (2 East, 322),

referring to the controversy as to implied warranty before Douglas's case, said: "Before that time it was a current opinion that a large price given for a horse was tantamount to a warranty of soundness; but when that came to be sifted it was found to be so loose and unsatisfactory a ground of decision, that Lord Mansfield rejected it, and said, 'there must either be an express warranty of soundness or fraud in the seller to maintain an action.'"

It is now law that a high price is not tantamount to an implied warranty.

Sometimes buyers of horses make mistakes, and suppose they have a warranty, because many dealers and others in selling a horse make all sorts of statements which are only intended to be representations, and it becomes a question with a complainant who thinks he has been defrauded, to consider were the words used only representations or warrranties. If a seller says "I can fully recommend this horse," or "I would sell it to my dearest friend." Although such language might induce a purchaser to buy, still those words do not amount to a warranty.

The distinction between a warranty and a representation is sometimes very nice, and the cases on the point are not always easy to explain: see *Goram* v. *Sweeting* (2 Wms. Saunders, 200) and *Hopkins* v. *Tanqueray* (20 L. J. N. S., 162).

No better test can be given of the fact whether statements are or are not a warranty than that given by Mr. Benjamin in his book on Sales (2nd ed., 499), he

says: "In determining whether it (that is a warranty) was intended; a decisive test is, whether the vendor assumes to assert a *fact* of which the buyer is ignorant, or merely states an opinion or judgment upon a matter of which the vendor has no special knowledge, and on which the buyer may be expected also to have an opinion or to exercise his judgment. In the former case there is a warranty, in the latter not."

When a representation is made during the course of a dealing which leads to a bargain, and such representation afterwards becomes an intrinsic part of the bargain, it constitutes a warranty; but a representation made by a seller to a buyer to induce the latter to buy, which however does not form any part of the contract, is not a warranty. No action will lie upon a misrepresentation only. The Exchequer Chamber said, in *Ormrod* v. *Huth* (14 M. & W., 664): "The rule which is to be derived from all the cases appears to us to be that where upon the sale of goods the purchaser is satisfied without requiring a warranty (which is matter for his own consideration) he cannot recover upon a mere representation of the quality by the seller, unless he can show that such representation was bottomed in fraud."

Occasionally it happens that there is a misrepresentation of fact, which is perfectly innocent, both buyer and seller thinking that they are dealing about a sound horse, and yet being in error. In such case, if there is no warranty, the buyer must pay the whole price;

but if there is a general warranty, he has a remedy, as the seller would be liable for the error, and not the buyer. See *Kennedy* v. *Panama Railway Company*, (L. R., 2 Q. B., 580), where Mr. Justice Blackburn said: "There is, however, a very important difference between cases where a contract may be rescinded on account of fraud, and those in which it might be rescinded on the ground that there is a difference in substance between the thing bargained for and that obtained. It is enough to show that there was a fraudulent representation as to *any part* of that which induced the party to enter into the contract which he seeks to rescind; but where there has been an innocent misrepresentation or misapprehension, it does not authorise a rescision unless it is such as to show that there is a complete difference in substance between what was supposed to be and what was taken, so as to constitute a failure of consideration; for example, when a horse is bought under the belief that it is sound, if the purchaser was induced to buy by a fraudulent representation as to the horse's soundness, the contract may be rescinded. If it was induced by an honest misrepresentation as to its soundness, though it may be clear that both the vendor and purchaser thought they were dealing about a sound horse and were in error, yet the purchaser must pay the whole price, unless there was a warranty."

Hitherto, the subject of warranting horses has been treated as one between the seller himself and the

buyer, but, necessarily, sometimes a servant or agent is entrusted with the sale of a horse, and the buyer does not come into contact with the owner at all.

The question then, arises, how far an agent or servant can bind his master or principal, and in what cases a warranty given by such agent or servant is sufficient to fix the principal or master with liability. Generally speaking, if an agent, such as an auctioneer, is employed for a particular purpose he has no right to exceed his limited authority. He is, in fact, a special agent, in which case it mainly devolves upon those having any transactions with such agent to ascertain what that agent's authority really is. In such a case the principal or real owner cannot be bound by any act of the agent which is outside the authority given him. Any act, therefore, not expressly warranted by the terms of the authority will have no binding effect on the principal unless, by necessary implication or inference, the limit of the authority covers the act. A servant is somewhat different; but even then if a servant of the owner of a horse is entrusted to sell a horse, the servant is not authorised to give a warranty binding upon his master; and in case a warranty is given by the servant, the onus of proving that it is within the authority conferred upon the servant is thrown upon the person who accepts such a warranty (*Brady* v. *Todd*, 9 Com. B. N. S., 592). The power to give a warranty, however, might be frequently implied wherever a general authority is given by a principal or master to an agent or servant;

this includes a power to do all acts necessary to perform and carry out that for which the general authority was given.

In the case of *Alexander* v. *Gibson* (2 Camp. 555), a servant, who was sent to sell a horse at a fair, and authorized to receive the price, gave a warranty that the horse was sound, without having any special authority to do so, but without any limitation of authority. It was held that the master was bound. Lord Ellenborough, in giving judgment, said, "If the servant was authorised to sell the horse and to receive the stipulated price, I think he was also authorised to give a warranty for soundness. It is now most usual on the sale of horses to require a warranty, and the agent who is employed to sell, when he warrants the horse, may fairly be presumed to be acting within the scope of his authority. This is the common and usual manner in which the business is done, and the agent must be taken to be vested with powers to transact the business with which he is entrusted in the usual manner." In this case, it is said that the master was a horse dealer, and that the servant was in the habit of selling horses for his employer, and, as will be seen from the case of *Howard* v. *Sheward*, post., the law is more stringent against horse dealers than it is against private owners.

Where warranties are given by agents, without express authority to do so, the general rule is, as stated by Mr. Benjamin, "that the agent is authorised to do whatever is usual to carry out the object of his agency,

and it is a question for the jury to determine what is usual" (Ben. on Sale, 2nd ed., p. 508). The important judgment of Chief Justice Erle, in the case of *Brady* v. *Todd,* will throw much light on the point. In that case the defendant was not a horse dealer, but a tradesman in London, having a farm in Essex. The plaintiff sent to him for a horse, and the defendant sent his farm bailiff with a horse with authority to sell, but no authority to warrant. Nevertheless, the bailiff warranted the herse to be sound and quiet in harness. The horse not being so, an action for breach of warranty was brought, and the plaintiff's contention was that "an authority to sell imports an authority to warrant." After referring to the earlier cases, and among others to that of *Fenn* v. *Harrison,* Chief Justice Erle said: "We understand these judges to refer to a general agent employed for his principal to carry on his business, that is, the business of horse dealing, in which case there would be by law the authority here contended for . . . . . But it is also contended that a special agent without any express authority, in fact, might have an authority by law to bind his principal as where the principal holds out that the agent has such authority, and induces a party to deal with him on the faith that it is so. In such a case the principal is excluded from denying this authority as against the party who believed what was held out, and acted on it; but the facts do not bring the defendant within this rule. The main reliance was placed on the argument that an authority to sell is by

implication an authority to do all that in the usual course of selling is required to complete a sale, and that the question of warranty is, in the usual course of a sale, required to be answered; and that, therefore, the defendant by implication gave to his bailiff an authority to answer that question, and to bind him by his answer. It was a part of this argument that an agent authorised to sell and deliver a horse is held out to the buyer as having authority to warrant. But on this point also the plaintiff has, in our judgment, failed. We are aware that the question of warranty frequently arises upon the sale of horses, but we are also aware that sales may be made without any warranty, or even an inquiry about warranty. If we laid down for the first time that the servant of a private owner entrusted to sell and deliver a horse on one particular occasion is therefore by law authorised to bind his master by a warranty, we should establish a precedent of dangerous consequence. For the liability created by a warranty extending to unknown as well as known defects, is greater than is expected by persons inexperienced in law, and as everything said by the seller in bargaining may be evidence of warranty to the effect of what he said, an unguarded conversation with an illiterate man sent to deliver a horse may be found to have created a liability which would be a surprise equally to the servant and the master. We, therefore, hold that the buyer, taking a warranty from such an agent as was employed in this case, takes it at the risk of being able to prove that

he had the principal's authority, and if there was no authority in fact, the law does not, in our opinion, create it from the circumstances . . . . . It is unnecessary to add that if the seller should repudiate the warranty made by his agent, it follows that the sale would be void, there being no question raised on this point" (9 C. B., N. S., 592).

This case was much commented on in *Howard* v. *Sheward* (L. R., 2 C. P., 150). There, the plaintiff being at a riding school, asked the proprietor "If he knew of a horse that would be likely to suit him," and the brother of the defendant Sheward, a horse dealer, who happened to be present, and who occasionally acted in the sale of horses for the defendant, said "he thought the latter had one." The horse was brought to the riding school and ridden by the plaintiff, and the defendant's brother, in answer to questions as to the soundness of the animal said, "I'll guarantee the horse is sound." The horse was then examined by a veterinary surgeon, and pronounced sound, and it was bought by the plaintiff for £315. The horse, however, after trial, proving to be unsound, was sold by the plaintiff, and an action brought to recover the difference in the price. Erle, Chief Justice, ruled that the brother, as servant of the defendant, a horse dealer, had authority to warrant, and the jury, finding he had done so and that there was a breach of the warranty, a verdict was entered for the plaintiff. Upon a new trial being moved for, it was refused, and the Court held that if the servant of a horse dealer gives a

warranty, notwithstanding that he is expressly directed not to warrant, the master is bound; the reason being that in the ordinary course of business the servant enjoys a general authority to sell, and that such authority, unless notice is given to the contrary, implies the power to warrant.

In his judgment Mr. Justice Willes says, "It appeared that David Sheward (the defendant's brother) had before occasionally assisted the defendant in the sale of horses. Is it then part of the business of a horse dealer to warrant horses which he sells? No doubt. . . . . It was an ostensible authority, which could not be negatived by showing a secret understanding between the horse dealer and his servant that the latter was not to warrant. The case of *Brady* v. *Todd*, sustains that proposition. The Court there declined to extend the rule to a single transaction of sale by the servant of a private individual, because in such a case the buyer has no right to presume any authority in the servant beyond that which is apparent on the particular occasion."

The judgment, however, of Mr. Justice Byles is so terse and clear, as reported, that it is given in full. After referring to the case of "Brady *v.* Todd," above quoted, he says: "The rule to be deduced from that case is this: if the servant of, or agent of, any private individual entrusted on one occasion to sell a horse—without authority from his master—takes upon himself to warrant the soundness of the animal, the master is not bound; but if the servant of a horse

dealer, or even one who only occasionally assists him in his business, being employed to sell, gives a warranty, the principal is bound, even though the agent or servant was expressly forbidden not to warrant. In such a case there is ostensible authority to do that which is usual in the conduct of the business of a horse dealer."

Mr. Justice Willes, in giving judgment in *Howard* v. *Sheward*, quotes Mr. Oliphant's book on horses with deserved commendation. That work will be found full of law on every subject connected not only with horses, but also with racing and driving, but is not as conveniently arranged as it might be; on the liability of the agent or servant of a dealer Mr. Oliphant says, condensing the language of Mr. Justice Bayley in *Pickering* v. *Busk* (15 East, 45): "If the servant of a horse dealer with express directions not to warrant, do warrant, the master is bound, because the servant having a general authority to sell is in a condition to warrant, and the master has not notified to the world that the general authority is circumscribed;" and although there is some apparent contradiction in the above cases, it may now be taken as law, that if the servant of a private owner warrant a horse, it must be shown he had authority to do so. If the servant or agent of a horse dealer warrant, the master or principal is bound, even if he has told his servant or agent not to warrant. Where also a livery stable-keeper, having in his stables a horse for the purpose of sale, empowers his servant to sell it, but directs him not

to give a warranty, and the servant does, nevertheless, warrant it, the master is liable on the grounds that the servant, having a general authority to sell, the public cannot be supposed to be aware what transpired privately between the master and servant. *Fenn* v. *Harrison* (3 T. R., 759). In all these cases the sale was effected by the servant in the usual course of business, and it is necessary in such cases, if the master does not wish to be bound, to give intimation to those who deal with his servant. It is different where the owner of a horse chooses to send a stranger with a horse to a fair with express instructions not to warrant, for in that case the agent would be only agent for one occasion, and the buyer would have to ascertain whether the servant's authority was limited or not. It may then be taken that the principal or master is bound by a warranty given by his agent or servant in all cases where such agent or servant is his general agent to carry on his business, even when such warranty is given contrary to express directions from the master. On this point the dictum of Lord Abinger, in *Cornfoot* v. *Fowke* (6 M. & W., 381), may be quoted. "Put the ordinary case of a servant employed to sell a horse, but expressly forbidden to warrant him sound. Is it contended that the buyer, induced by the warranty to give ten times the price which he would have given for an unsound horse when he discovers the horse to be unsound, is not entitled to rescind the contract? This would be to say that

though the principal is not bound by the false representation of an agent yet he is entitled to take advantage of that false representation for the purpose of obtaining a contract beneficial to himself, which he could not have obtained without it."

Although the purpose of this work is to treat more particularly of warranty, still it should be remembered that a contract respecting a horse, as also any other contract, may be rescinded if either party to the contract has been induced to enter into it by *fraud*, for fraud renders all contracts void, both at law and in equity. The English law does not attempt to define what fraud is, because fraud is in itself so manysided that it is almost impossible to do so, nor does the French law atttempt a definition, although the civil code of France purports to define almost everything. Still it provides Article 1,116: "Fraud 'le dol' is a ground for avoiding a contract when the tricks, 'les manœuvres,' practised by one of the parties are such as to make it evident that without those tricks the other party would not have contracted."

A horse, then, may be sold without any warranty and the buyer return it, if there has been any fraud on the part of the seller in the transaction. Nor will such fraud, if perpetuated by only one person, be a criminal offence. In such case the fraud is a mere imposition, and the buyer must look out for himself, *R.* v. *Wheatley* (2, Burrell, 1,128), but where two or more persons combine together to cheat in the sale of a horse it is a criminal offence, and renders such

persons liable to be indicted for a conspiracy—*R.* v. *Sheppard* (9 C. & P., 123), but it must be shown that all the parties charged knew of the fraud, *R.* v. *Pagwell* (2 Starkie, N. P. C. 402), also *R.* v. *Read* (6 Cox C. C., 135). So also it is a criminal offence for two or more persons to obtain money for a horse upon statements, all of which are absolutely false, as where two defendants told the buyer that certain horses were then the property of a lady and had been ridden by a lady, and never belonged to a horse dealer, thereby inducing the buyer to purchase the horses for his daughter by statements, not one of which were true. *R.* v. *Kenrick* (5 Q. B.). In former times, the method of obtaining a remedy in cases of breach of warranty, was by action of deceit. Much useful information, even for modern actions, may be gained by perusing chapter xv. *Selwyn's Nisi Prius,* vol. 1, 11th edition, p. 643, on Deceit. A mere naked lie is not actionable; the deceit that is actionable, though possibly not so common now by an action of deceit, is some lie or false statement made knowingly with a design to injure, cheat, or deceive another person; but on an action for a breach of a general warranty, it is not necessary to prove a knowingly false statement.

In selling horses it is not unusual, when doing so by auction or private sale, to state that they are sold "with all faults," or, "take him as he is, subject to a veterinary inspection." In such case the seller is not bound to point out or disclose defects in the horse. At one

time it was supposed that the law was otherwise, but in *Baglehole* v. *Walter* (3 Camp, 156). Lord Ellenborough, after refusing to subscribe to *Mellish* v. *Motteux*, said "where an article is sold 'with all faults,' I think it is quite immaterial how many belonged to it within the knowledge of the seller, unless he used some artifice to disguise them, and prevent their being discovered by the purchaser. The very object of introducing such a stipulation is to put the purchaser on his guard, and throw upon him the burden of examining all faults both secret and apparent. I may be possessed of a horse I know to have many faults, and I wish to get rid of him, for whatever sum he will fetch I desire my servant to dispose of him, and instead of giving a warranty of soundness, to sell him 'with all faults.' Having thus laboriously freed myself from responsibility, am I to be liable, if it be afterwards discovered that the horse was unsound? Why did not the purchaser examine him in the market, when exposed for sale? By acceding to buy the horse with all faults, he takes upon himself the risk of latent or secret faults, and calculates accordingly the price which he gives. It would be most inconvenient and unjust, if men could not, by using the strongest terms which language affords, obviate disputes concerning the quality of the goods which they sell. In a contract such as this, I think there is no fraud unless the seller, by positive means, renders it impossible for the purchaser to detect latent faults; and I make no doubt that this will be held as law when the question shall

come to be deliberately discussed in any Court of Justice." This decision is so manifestly in accordance with common sense that it would be unnecessary to make any remarks upon it, but it should be pointed out that an attempt to conceal patent faults will not cure a sale "with all faults." Supposing for instance a seller stopped up sand-cracks with any matter so as to hide the defect, then a sale "with all faults" would not protect the seller. Where a groom painted over the broken knees of a dark brown horse, sold at auction "with all faults," so well that the buyer did not discover the fact that the hair was off the knees until the purchased horse was brought to the new stable and washed, an action was brought to recover back the price paid for the horse, and the questions left to the jury were, was the injury to the knees wilfully concealed? and with an intention to deceive? and the jury found in the affirmative on both questions. On this, judgment was entered for the plaintiff, it being ruled that a sale "with all faults" meant "as the animal was," or without anything being done to hide defects, ailments, or blemishes. If a person wishes to get rid of a horse he knows to be defective, the best way is to sell him by auction, with no conditions whatever—simply selling a horse.

In concluding this chapter, no better advice can be given to anyone dissatisfied with any bargain in horse dealing than that contained in *Selwyn's Nisi Prius*, 11th Ed., Article Deceit, p, 650: "As soon as the unsoundness in a horse is discovered, or any other

alleged breach of warranty, the buyer should immediately tender the horse to the seller (see *Caswell* v. *Coare*, 1 Taunton, 567), and if he refuse to take it back, sell the horse as soon as possible for the best price that can be procured (*Dingle* v. *Hare* 7 C. B., N. S., 145); for the buyer is entitled to recover for the keep of the horse for such time only as would be required to resell the horse to the best advantage (Denman, C. J., in *Chesterman* v. *Lamb*, 2 A. & E., 132, citing *McKenzie* v. *Hancock*, Ry. & M., 436)."

The amount of damage a person wronged in a horse deal can recover is the difference between the amount paid by him and the amount for which the horse is sold by him, plus such expenses as the buyer has been necessarily put to by reason of the wrongful dealing. If anyone purchases a horse, warranted for a particular purpose, and finds the animal unfit for that purpose, he may, without further notice to the seller, bring an action to recover back the price (*Chanter* v. *Hopkins*, 4 M. & W., 400); but the better course is to sell the horse after notice, and to sue for the difference.

CHAPTER II.

CONTENTS:—PATENT DEFECTS, DEFINITION OF; WHEN INCLUDED IN A WARRANTY. "MARGETSON *v.* WRIGHT," REMARKS ON. HOUSE OF LORDS COMMITTEE ON HORSES, SUGGESTIONS OF. MEANING OF TERMS "SOUND," "UNSOUND," "VICE," "QUIET TO RIDE AND DRIVE."

IN buying and selling horses, or indeed any other articles, no cause is so prolific of disagreements and subsequent litigation as bargains or contracts in which the seller has shown, or the buyer should have seen, *patent defects* in the article sold and bought. Patent defects are avowed blemishes or wants in the subject of contract, which are visible or manifest to the naked eye. Where this has been the case with regard to any article bought and sold, it has always been law that "a general warranty does not usually extend to defects apparent on simple inspection, requiring no skill to discover them, nor to defects known to the buyer" (Benjamin on Sales, 2nd ed., 502). Hence it was long ago laid down in *Bailey* v. *Merrell* (3 Bulstrode, 95): "To warrant a thing that may be perceived by sight is not good." Yet although this doctrine appears so much in accordance with common sense and the or-

dinary usage of every day life, so much stress has, in a commercial country like Great Britain, been laid on the need of upholding the principle of guarantee or warranty, that legal cases have so far established a different doctrine as to make it unsafe, especially in selling horses, to give a warranty, even after both parties have discussed defects or blemishes in the horse, the subject of the bargain.

The cases at law are not free from apparent contradiction on this point. *Liddiard* v. *Kain* (2 Bingham, 183) is quoted as if it supported the doctrine that a general warranty guarantees the buyer even against every sort of defect manifestly visible at the time of sale, but this is not so. There Liddiard, the seller, when selling two horses to Kain, the buyer, told him that one of them had a cold; but, nevertheless, he warranted the horses as "sound and free from blemish at the end of a fortnight." When that time elapsed the buyer refused to take them, one horse still having a cold, and the other having a swollen leg. In evidence, however, it came out that the leg was swollen at the date of sale, and was apparent to every observer. Upon the seller bringing his action for the price of the two horses, the jury found for the buyer, and the Court refused a motion for a new trial, on the grounds that although a warranty was inoperative against patent defects generally, in this case the warranty applied not to the time of sale when the defects were patent, but to some future period—viz., the end of the fortnight. The whole facts of the case are not stated

in the reports, but it may be fairly inferred that what happened was this; the seller said: "I have these horses with this cough and blemish, I cannot warrant them now, but will warrant them at the end of a fortnight," for they were blemishes and ailments which a fortnight's nursing would ordinarily remove; but in a fortnight's time these defects were on the horses still, they had not been cured, and the buyer had a right to refuse them; for although he saw the defects at the time of sale, the warranty said they were to be delivered "sound and free from blemish in a fortnight."

Another case on the same points is not so easy of explanation. In *Margetson* v. *Wright* (7 Bing., 603, & 8 Bing., 454) an action was brought by the buyer of a horse against the seller on an alleged breach of warranty. The facts were these: Margetson, a solicitor, wanted a horse to race, and applied to Wright, a horse dealer, for one; Wright showed him a horse called "Samson," telling the buyer at the same time that the horse was a crib-biter, and also that it had had a splint, which had been reduced, but which had thrown the horse out of training. After some bargaining Wright, the seller, took £90 and a contingent sum of £50 for the animal, which was admitted to have been worth £500 if these defects which were disclosed had not existed; but on the buyer submitting a written warranty to him for his signature, in these words—"And the said Mr. Wright does hereby warrant the said horse to be sound, wind and limb"—the latter refused to sign it

unless the words "at this time" were added after the statement that the horse was sound. With this addition a warranty was, however, given, and the horse was taken away. Margetson put the horse in training, and at the end of six months "Samson" broke down, whereupon he brought his action for a breach of warranty, and the jury gave him a verdict. A motion for a new trial was made by the defendant, and was granted, and in doing so Chief Justice Tindal laid down some valuable law in relation to dealing in horses where they have patent defects, which, although not exactly bearing on the point now under discussion, is of great value in a general consideration of the subject. He said: "The older books lay it down that defects apparent at the time of a bargain are not included in a warranty, however general, because they can form no subject of deceit or fraud, and originally the mode of proceeding on a breach of warranty was by an action of deceit, grounded on a supposed fraud. There can, however, be no deceit where a defect is so manifest that both parties discuss it at the time. A party, therefore, who should buy a horse, knowing it to be blind in both eyes, could not sue on a general warranty of soundness." He then goes on to suggest that it would have been better, when the case was tried, to have left certain questions to the jury, to consider whether the horse was, at the time of the bargain, sound wind and limb, saving those manifest defects contemplated by the parties, and the Court granted a new trial. On the case going down the jury again

found for the plaintiff, and, in reply to the learned judge who tried the case (Baron Vaughan), who asked them to say whether the horse was sound, or, if unsound, whether the unsoundness arose from the splints of which evidence had been given, said "that although the horse had exhibited no symptoms of lameness when the contract was made he had upon him the seeds of unsoundness at the time of the contract, arising from the splint." Upon another motion for another new trial, the Court refused to grant it, holding that though the buyer knew of the splint the jury found the result, as it turned out, was not apparent to him, and that, therefore, he was protected by the warranty of soundness. It is not probable that this end of the case is satisfactory to anyone reading it, and who knows anything about horses; still it is now to be understood as law, and has been followed in other cases. And the lessons to be learnt from the case are that if the owner of a horse, having any patent defect, say a clouded eye or a splint, or spavin, wants to sell it, he should be careful not to warrant the animal without a memorandum on the warranty, if a written one, of such defect, and a statement that he will not be responsible for unsoundness which may arise from such defect, or proof of such defect being excepted from the warranty, if the warranty be by word of mouth. Speaking as those who must submit to decisions legally made, one must be guided by the case; but otherwise it would be hard to say what Wright, the defendant, could have done more

than he did to protect himself. He tells the buyer of the defect; he sells the horse for less than a fifth of the animal's value, supposing it had not such a defect; and he insists upon adding to the warranty that the horse was sound these words, "at this time." To persons conversant with horse cases, it is not too much to say his meaning was, "the animal is sound now, but if you train it, I will not be answerable." However, a jury found twice against such a construction of the meaning of the warranty, and the second time the Court refused to disturb the verdict. It is just possible that the defendant knew how and when a horse would train, and the plaintiff, a solicitor, how and when to bring his action; but it seems absurd to say that because a horse in training—and, therefore, almost necessarily a young horse—goes lame, he had the seeds of unsoundness in him six months before. Such a statement may or may not be true, but it could not be proved. But this is true, that every young horse has more or less structural alteration every six months of its life until it attain its fifth or sixth year, and in no place is this structural alteration more marked than in the splint bones. That careful observer, Mr. Percival, in his lectures on the horse (p. 69), says, after speaking of the elastic power of the splint bones: "Be the operation and use of these elastic powers what it may, few horses retain them after the adult period; the ligamentous elastic material becomes converted into osseous inelastic substance, and thus the three bones"—that is, the cannon and two splint

bones—" are, in point of fact, consolidated into one. I have ridden numbers of horses in my time, and, as a general rule, certainly find that young horses possess more elasticity in their movements than old horses; and this is readily enough accounted for when we come to consider the number of animal springs there are in the body, all or most of which become impaired, and some altogether lost in the course of age and work; among them, however, I should say those of the splint bones were probably the smallest in importance, and, therefore, would be the least of all missed. In every horse that has splints this conversion of elastic into osseous union has necessarily taken place; and, as I said before, this is also found to be the case in every horse of a certain age, whether he show splints or not."

As a rule all horse cases are (as was this case of *Margetson* v. *Wright*) mixed cases of law and of fact, and are most difficult ones for a jury to determine. Judges do their best to explain the points of law, and leave the facts of the case to the jury, and then, if not quite satisfied with the verdict, are unwilling to disturb it; but still many verdicts in horse cases are not satisfactory. A jury is an excellent tribunal to say aye, or no, on certain facts, but when questions have to be left to them, as was done by Baron Vaughan in *Margetson* v. *Wright*, the answers of twelve men are not like the decision of a judge. It is hoped that now, under the provisions of the new Judicature Acts, horse cases will be tried by a judge alone. They assuredly

would be, only that the party in fault will probably elect to have a jury. If sellers and warrantors of horses, will, however, carefully read this case, to which some space has been devoted, and learn that a jury found a horse became lame from a splint after it was put in training, and because it had the seeds of unsoundness some months before, and when they consider that in these months it must have naturally acquired considerable structural alterations in its legs, they will possibly think with the writer that this verdict was straining the law of a breach of warranty most unfortunately for horse sellers, and should be a warning to them to keep clear of juries for evermore.

A somewhat similar state of facts were shown in *Smith* v. *O'Bryan* (11 L. Times, N. S., 346). There it was proved that the defendant sold a horse to the plaintiff, but before doing so and giving a general warranty, pointed out to the plaintiff a splint, which was visible on the horse's foreleg. After a time the horse became lame, and, upon the plaintiff bringing his action, the jury returned a verdict in his favour; and they also found that the lameness arose from the splint to which defendant had, before the sale, called the plaintiff's attention. On a rule being moved for a new trial, Chief Baron Pollock drew a distinction between a patent defect such as a splint and such a patent defect as blindness, following in effect, and quoting the unfortunate case of *Margetson* v. *Wright*, above referred to. But Baron Bramwell, in following the Chief Baron, gave his decision on other and much wider grounds,

namely, that where, as in this case, a written warranty is given, it cannot be modified by any parol evidence that defects existed at the time in contravention of such warranty. He said: "I think the warranty, being a written document, cannot be altered by parol. When the warranty is by parol, I can understand it can be limited by circumstances occurring at the time it was made, although in form it may be general. This does not apply to a written warranty."

It will be remarked that these words of the learned Baron are not precisely bearing on the point before the Court; they are, in fact, *obiter dicta* on another point, namely, the question of admitting parol evidence to vary or enlarge a written warranty, and, therefore, as such cannot be quoted as precedent law. Still, it is not improbable, for reasons given below, that this limited view of a written warranty may hereafter prevail, and, therefore, every horse dealer or seller should be very cautious when selling a horse with patent or known defects in giving any warranty at all, unless the buyer will accept one with a memorandum of those defects made on it, as before suggested. Ordinarily a a written warranty has been treated by the Courts of Law as merely putting into writing the fact that there was a warranty, and although the giver of such a warranty has been bound by it, and has not been allowed to set up the defence of no warranty, it has been permitted to explain the circumstances under which it was given, just as any letter or writing may be explained. It may be that henceforward more restriction

will be put upon a written warranty, and, as the learned judge above quoted said, "The warranty being a written document will not admit of alteration by parol."

Probably, after all, there will be no great hardship in this. A warranty is a matter of mutual advantage. The seller gives it to enhance the price of the article he is selling, and the buyer asks for it to protect himself in his purchase. It is right and seemly that a document of such a character should be made and written with some care, and should contain within its wording all the stipulations, conditions, and agreements necessary for its construction and validity; but, whatever may be the ultimate decision respecting written warranties, every seller of a horse should remember that where patent defects or known faults exist in the animal he is selling, or where future possible ailments have been discussed, if the seller gives a warranty it is very probable he will not be permitted, if sued in an action for breach of warranty in respect of such defects or ailments, to set up the defence that the plaintiff knew of the matters he is complaining of when he bought the horse, and that, therefore, when the seller sold the horse there could have been no deceit or fraud attempted to mislead the buyer, or induce him to buy the animal.

A distinction should be drawn between patent defects caused by disease, accident, or overwork and those which are natural or only malformations with which the horse was born. A warranty will be of no use against malformations, however detrimental they

may be to a horse's action or health. For instance, a horse may have such badly made shoulders as to cause the animal to move very short and trip constantly, or a horse may be cow-hocked to a degree which will interfere with the action of its hind legs. These are certainly patent defects, but not of the character now being treated of. It is a question whether curby hocks are a natural malformation or otherwise. Some veterinary surgeons think they are caused by overworking young horses, and so bringing on more or less enlargement of the stifle joints, and then the horse, being put to hard work, throws out a curb; others insist upon it that horses are born with these hocks, and, therefore, that sooner or later curbs will come on such hocks. In *Brown* v. *Elkington* (8 M. & W., 132) it appeared that a horse threw out a curb a few days after being bought with a general warranty, the horse's hocks being curby, having been objected to by the buyer at the sale. Upon the buyer bringing his action as for a breach, the jury, by direction of the judge, found for the defendant, on the grounds that curby hocks were not symptoms of disease, as splints are, but malformations for which the seller is not liable.

The difficulties attending the sale of horses with avowed faults are so many that it would be better not to give a warranty at all where they exist.

In connection with this matter of patent defects and the general rule of law above mentioned, namely, that a general warranty does not include patent defects, or,

in other words, that if a person buys a horse with, say manifestly broken knees, and also takes a warranty, that such warranty shall not refer to the broken knees, much discussion may arise as to how such a rule would apply to a horse dealer. An ordinary buyer would not notice many classes of defects in a horse, or see blemishes or wants in the animal which are symptomatic of disease, but which would or should be at once seen by a horse dealer, and should put him on his diligence. For instance, suppose a horse dealer were bargaining for a horse with very contracted feet, in nine cases out of ten such feet are the results of some sort of foot disease, and a person accustomed to horses would instinctively look out for something wrong there; in such case, would a warranty to a horse dealer exclude such defect, which should be at least patent to him? That is to say, if he took a warranty, and afterwards the horse turned out faulty on his feet, could he set up the warranty, or ought he to be bound by the doctrine of patent defects? As will be shown, at a future page, a Committee of the House of Lords, presided over by Lord Roseberry, took a great deal of evidence on the subject of warranty, and recommended its discontinuance in horse dealing transactions, and this recommendation was chiefly owing to the statements that some horse dealers insisted upon a warranty from breeders, then kept the horse a few days, and, if they did not get a market, returned it on the breeder's hands. Sometimes this is so, and the reason is that the dealer from his know-

ledge and skill, detects defects in a horse which he is pretty certain a veterinary surgeon will pronounce unsoundness, and which he says nothing about at the time of sale. In this particular it is probable that the present method of trying horse cases is unsatisfactory, and that it should be a question of fact in an action for breach of warranty when brought by a dealer. Did he know, or ought he to have known, that there were diseases and defects on the horse he was buying, premonitory, at all events, of unsoundness? If he did he should be bound by them, and this would often prevent those frauds above alluded to and complained of, where horse dealers get possession of horses with warranties, and then, unless they get a purchaser, threaten to return them to the breeder, and so obtain either an abatement in the price, or some other equivalent.

What patent defect can be more apparent to a horse dealer than incipient broken wind? Yet nine out of ten ordinary buyers, such as farmers, would not know if a horse was or was not affected with such an ailment in its early stages. Where a horse dealer takes a warranty, why should he recover on an action if the breach is alleged to be some defect or ailment which, in the ordinary course of his business, he must have known and observed? The cases in the law books, however, are in his favour. A distinction would seem to be drawn between defects which are manifest to every one and defects which it requires skill to discern. In the former case a warranty or description will be of

no use against such defects, and will not be held to include them; whereas, in the latter case—that is, where skill is required to discern and pick out the defects—a warranty would include such defects, and would secure the purchaser against any loss arising from them. This state of the law certainly gives rise to fraud amongst small dealers.

The most marked of these cases is *Tye* v. *Fynmore* (3, Camp. 462). There, on a sale of "fair merchantable sassafras wood," the purchaser refused to take the article, alleging that these words meant in the trade the roots of the sassafras tree, but that the article tendered to him by the plaintiff was wood—part of the timber of the sassafras tree—not worth more than one-sixth as much as the roots. In answer to this it was proved that a specimen of the *wood* rejected by the buyer was exhibited to him before the sale, and it was also shown that he was a druggist well skilled in the article, and therefore bound to know what he was buying, but Lord Ellenborough said—"The question is whether it was in the understanding of the trade 'fair merchantable sassafras wood,' which it is clearly proved not to have been. It is immaterial that the defendant is a druggist, and skilled in the nature of medicinal woods. *He was not bound to exercise his skill, having an express undertaking from the vendor as to the quality of the commodity.*"

The passage printed in italics is not so emphasized in the original, but is so very strong that the reader's attention is specially directed to it. Assuming such

ruling to be law, the same principle would apply to horse dealing as to buying sassafras wood; and if a horse dealer takes a warranty—that is, an express undertaking from the seller as to the quality of the horse he is buying—he is not bound to exercise his skill to detect any fault or defect in the animal, however manifest or visible it may be to him from the very nature of his trade and the constant exercise of his calling. He will be on the same footing as any other purchaser, however ignorant of horseflesh.

It is partly this state of the law and partly the unsatisfactory manner in which juries have decided horse cases, which have occasioned the complaints against warranty, and which are to be found given expression to in the Appendix to the Report of the committee before alluded to.

In 1873 a Committee of the House of Lords, with Lord Roseberry as chairman, took a great deal of evidence respecting the scarcity and breeding of horses, and other matters in connection with the subject. His Royal Highness the Prince of Wales attended the committee, and altogether the members of it were better qualified to inquire into the subject than any other number of gentlemen. The evidence given was very valuable, and in their report the committee say:—"As regards warranty, which it is urged has caused serious loss and annoyance to breeders, it would appear desirable that a specified time should be fixed, beyond which a general warranty should not be enforced. And it is to be hoped, however, after the

evidence appended on this point, and considering the commanding position in which breeders are put by the great demand for horses, the system of warranty will disappear in the breeding districts."

After the evidence they had heard the committee could not well do otherwise than make this report, but it is doubtful if all the witnesses knew what they were talking about when they discussed the subject of warranty. Some of them seemed to think that a horse could not be sold without a warranty, and, as a sample of what sensible men sometimes suppose, the following is taken from the evidence of Mr. W. Shaw, a Yorkshire horse dealer (Blue Book, p. 99). The Duke of Richmond is questioning him:—

Q. "You say that horses are warranted, the consequence of which is that a man who sells a horse is bound to take him back from the man who buys if the horse is unsound?

A. "Yes; within six months.

Q. "What makes you say within six months?

A. "That is according to the rules, I suppose. I have heard six months spoken of as the time specified in which it has to be done.

Q. "You do not know it otherwise than by its being spoken of so?

A. "I have known horses kept for about six months, and then returned.

Q. "I suppose a person might sell a horse, and agree to take him back again within three months only?

A. "Yes, he might fix three months by agreement. If it was agreed that the veterinary surgeon should pass the horse before it was sold, then there would be no dispute about it. I think that would be the best plan I could prescribe.

Q. "I am not speaking of what you would think the best plan. Supposing a man sells a horse and warrants him—he may only warrant him for three months—there is nothing to compel him to warrant the horse for six months, is there?

A. "I think that six months is the time, according to the Act of Parliament.

Q. "You think that according to law the time must be six months?

A. "Yes."

Where this gentleman got his law from, it is difficult to say. There is no such Act of Parliament; perhaps he had heard of six months in the case of "*Margetson* v. *Wright*," before referred to. Colonel Kingscote, in his evidence (Blue Book, p. 183), says a common warranty from Horncastle fair lasts 28 days, and, with other witnesses, spoke strongly against the system of warranty; but it is not the warranty, it is more often the system of trying the warranty which is in fault. The breeder gives the warranty to get a good price, and very often the horse is sound; but juries are utterly unfit to try that question. To try the fact, was there a warranty given or not, cannot be done so well by any tribunal so well as by a jury. And so with every simple question of fact; but, frequently, a

horse case is a question of soundness or unsoundness, and is very technical, full of scientific evidence, and is no more fit to go to a jury than a patent case. Still, until cases of this kind can be tried by a judge or by assessors who know something about the business, farmers should hesitate in giving warranties, unless for very limited periods, such as eight days. There is no necessity to do so. Captain Slack, in his evidence before the same Committee (Blue Book, p. 194), says that when dealers buy horses at a fair in Ireland, they are never warranted sound by the breeders, and the following extract from the evidence of Mr. P. Sheils, a large general dealer in horses, is material on the subject. The questioner is Lord Kesteven, who, after remarking he had seen the witness in some parts of Lincolnshire, said (p. 114) :—

Q. "Generally, when you come to a fair, you are sold out before the end of the day?"

A. "Yes."

Q. "You never take any back?"

A. "Not if I can help it. I am pretty well known, and the people like me, and so I am able to sell, although I do not warrant any. I do not have to give the money back. When I get the money, I stick to it. I have the horses, there they are; if the buyers are not able to judge for themselves, they may get the assistance of any professional man to help them to judge; but I give no warranty, nor do I get one.

Q. "I think I have seen you cleared out of your stock at a very early hour in the day at a fair?

A. "Yes; I have generally a good many customers, that is because I supply them as well as I can.

Q. "It arises from your excellent reputation?

A. "I suppose so; if they did not think I was treating them fairly, they would not stick to me for so many years.

Nor are warranties given in Scotland. Mr. Stephens, in his *Book of the Farm* (3 ed., vol. 1, 1399), says:— "With regard to warrandice, by cases it is seen that it is not necessary by the law of Scotland that a horse should be warranted sound at the period of sale as is generally thought to entitle the buyer to return it should it prove unfit for the purpose for which it is sold. . . . By the law of both Scotland and England, the buyer of a subject, sold with all faults, has no right to question the sale when he has not been drawn into it by fraud."

We now come to consider what is meant by the term *sound,* as applied to a horse. A sound horse then really is a horse in perfect health, with perfect action or motion in all its limbs and organs. It may be said there is not such a horse; not exactly so, perhaps, but sufficiently to answer the purposes for which horses are required. A veterinary surgeon has remarked that there is no such thing as a sound horse. If by this is meant a perfect horse, it is very near the truth. If a person who knows anything of the action of horses will watch the carriages in Hyde Park in the season, where, perhaps, the finest horses in the world are congregated, he will be surprised to find how many step

short, or are in some way faulty in that exact and perfect motion which may be called sound action. The term "perfect action" is used because that is, so far as soundness in moving is concerned, the legal definition of that word; but a horse may have sound action, and yet not be perfect. In *Best* v. *Osborne* (R. & M., 290,) it was not disputed that the horse complained of moved soundly enough, but it had been "nerved," that is, an operation had been performed on the nerves of the foot to cure it of lameness. Mr. Justice Best said, after referring to the horse being warranted sound, "sound means perfect, and a horse deprived of a useful nerve was imperfect, and had not that capacity of service which is stipulated for in a warranty of soundness." And so, in *Kiddell* v. *Barnard* (9, M. & W. 670), Baron Parke says, "the word sound means what it expresses, namely, that the animal is sound and free from disease at the time it is warranted to be sound;" and, in the same case, Baron Alderson said "the word sound means sound, and the only qualification of which it is susceptible arises from the purpose for which the warranty is given. If, for instance, a horse is purchased to be used in a given way, the word 'sound' means that the animal is useful for that purpose, and 'unsound' means that he at the time of sale is affected with something which will have the effect of impeding that use." It may be now taken as law that the term "sound" is as defined by the learned judges in the above case; but whilst this is so, it will be found so much easier to define the negative of

soundness, namely unsoundness, that the next chapter is devoted to an attempt to show generally what diseases, ailments, and defects have been held to be and are "unsoundness" in a horse, and also to point out those faults or habits in the horse as distinguished from defects constituting unsoundness, and which generally are called vices, and against which a warranty of "free from vice" should protect a buyer.

Vice, or really vicious habits, in a horse are so easily enumerated and so apparent that it requires no skill to discern them. A biter or kicker soon shows the vice if it is a real one, and, if it is only a supposed vice, it is often the fault of the buyer; because a person may have bought a horse, and, upon trial, suppose his purchase is vicious and ill-tempered, whereas the animal is really not so. Many horses will be perfectly quiet and good-tempered with persons who are not afraid of them or who treat them kindly, but who become perfect nuisances where allowed to have their own way, or become so terrified by ill-treatment as to show their fear in the only way dumb animals can show it, by shying, bolting, or kicking. There are, moreover, vices which are only shown on particular occasions, and which are often the product of fear from some particular cause, or resentment for some particular injury.

A horse that was known to be perfectly quiet for years was struck by a groom on the stifle joint with a stable fork to make it get over while the litter was being shook out; the horse never forgot it, but whenever

afterwards a man passed behind it with a fork in his hand, the animal always kicked or lashed out with one leg at the passer, and the habit became so confirmed that the horse was obliged to be put in a corner stall, or some accident would have happened. It was the horse's only fault, but it was a bad one, and grew into a decided vice. If then a buyer of a horse finds the animal as he thinks vicious, he should, before claiming to set aside the sale on a breach of warranty, consider well whether the horse bought has been properly treated, and by persons accustomed to handle horses. Juries are very unwilling to believe that vice in a horse can be concealed, judging, as is the fact, that if a horse is really vicious it will show the vice at the time of sale, and disregarding complaints of a trifling nature, which often really are playfulness, or the result of too high feeding without work.

In the form of warranty given in a former chapter there is a guarantee that the horse is "quiet to ride and drive;" such a statement means that a horse will go quietly when ridden, and in double or single harness; so too if a horse is warranted "quiet in all respects," this means quiet in harness (*Smith* v. *Parsons*, 8 C. & P., 199). Perhaps no warranty is alleged to be broken so often as one of this class, and yet none in which the buyer of a horse more often fails in obtaining redress, not because the horse has not kicked or ran away, or done something clearly showing that on the occasion on which the breach of warranty is alleged he did not

behave properly, but because the buyer has not used those proper precautions which every person should use when first trying a new horse. In one case which came to the writer's knowledge, the horse, a young one, was bought in August and not used for two months; it then was put in a dog cart, and kicked, and upon action brought for breach of warranty the jury said, and rightly, that if a man lets a horse, especially a young one, run for two months, he should use great caution in putting it into harness, and that plaintiff did not use such caution. So it may happen that a saddle does not fit a horse, or a bridle be too short in the cheek-piece, or the harness may be too small and pinch, and in such cases a horse becomes restive for awhile, which would not have happened with its old saddle or in the hands of those to whom it was accustomed (see *Buckingham* v. *Reeve*, N. P. Exch., Dec. 1, 18). Another example may be given, in which a horse was sold "quiet to ride and drive by a lady," and as a fact the animal was as quiet as possibly a horse could be. It was of a sluggish nature and slow. Soon after the horse was bought, some young gentlemen, sons of the buyer, put it into a dog cart to drive a short distance on a fishing excursion. Having forgotten their whip, and the animal not going up hill quite as fast as they liked, one of the party struck the horse on the buttocks with the fishing rod; the horse kicked, and, in doing so, got its leg over the shaft, and an accident occurred. Both buyer and seller in this case were friends, and the matter was referred to a neigh-

bour to decide the case, and he ruled that a whip and not a fishing rod is the proper instrument to strike a horse with, that the proper place to whip a horse is the flank or shoulder, and that nothing would be more likely to make a sluggish horse kick than pressing him up hill with blows of the nature above indicated; the buyer accordingly kept the horse, which he drove in a brougham for many years afterwards, and had only one fault to find, which was that the animal was too slow and quiet.

In considering the subject of soundness or unsoundness in horses, it should be taken as settled law that any unsoundness is a breach of warranty, whether such unsoundness can be cured or otherwise. Should a horse recover, even before action brought, it is no defence to an action on a breach of warranty. In *Elton* v. *Brogden* (4 Camp., 281) Lord Ellenborough long since laid down that "a warranty of soundness is broken if the animal at the time of sale had any infirmity which rendered it less fit for present service. It is not necessary to prove that the disorder should be permanent and incurable." So again in *Elton* v. *Jordan* (1 Starkie, N. P. C., 127), "any infirmity which renders a horse less fit for present use and convenience is unsoundness."

By a French law, passed in 1838, twelve diseases and defects are enumerated as legally constituting unsoundness, and various enactments were framed for the purpose of protecting persons dealing in horses. This law has, however, not worked well, and the present

French Government are understood to be preparing a new law on the subject. No law that attempts to define fraud will meet all cases. Fraud is too protean to be met by legal enactments of that kind.

The rule as to unsoundness, as laid down in *Elton* v. *Brogden*, is so very clear that it is given here in full: "If at the time of sale the horse has any disease which either actually does diminish the natural usefulness of the animal, so as to make him less capable of work of any description, or which in its ordinary progress will diminish the natural usefulness of the animal, *this is unsoundness;* or if the horse has, either from disease or accident, undergone any alteration of structure that either actually does at the time or in its ordinary effects will diminish the natural usefulness of the horse, such a horse is *unsound.*" With this definition then fresh in the mind, it is proposed to present shortly to the readers, in the next chapter, those diseases and defects which constitute in law unsoundness.

CHAPTER III.

Contents:—The Diseases and Ailments of Horses which Legally constitute Unsoundness—Diseases of the Feet—Corns, Thrush, Quittor—Navicular Disease or Grogginess—Laminitis or Fever in the Foot—Contracted Feet—Grease—Diseases of the Legs—Ringbone—Splints, Spavins, Curbs, Inflammation of the Tendons, Broken Knees—Diseases of the Body—Broken Wind—Inflammation of the Bladder and Organs—Diseases of the Throat and Head—Glanders, Strangles, Coughs, Catarrh, Thick Wind, Roaring. Vices, what are.

Of Unsoundness and Vice.—In a former chapter the definitions of soundness and unsoundness have been given. It is proposed now to say something respecting the diseases of horses which clearly constitute the latter defect, not as suggesting that in any litigation the evidence of the complainant, as derived from any legal book, can be of value from a scientific point of view; but to enable any one who thinks he has been wronged in a horse transaction to see whether he has or has not a remedy against the

person supposed to have wronged him before he embarks in a lawsuit.

The veterinary art has very much improved of late years. Veterinary surgeons now know what they are talking about: but still, in rural parts, the ignorance respecting the real diseases of animals is great. Many farriers are natural healers of animals, just as many doctors are natural healers of men; from practice and long watching, and a natural aptitude for the work they effect marvellous cures, and yet would be unable to pass the most simple examination on the anatomy of any part of a horse. When then an action is commenced on the advice of such men it often fails, for in giving scientific evidence they make exhibitions of themselves which are very ludicrous. In Dorking County Court a farmer once brought an action against a smith for ill-shoeing and killing a horse of his, recently purchased. The actual facts were, the horse was bought with long standing laminitis, or fever in the feet, and without shoes; in shoeing the animal it is possible he was pinched and the disease intensified and the horse died; but the farrier produced in court the coffin bones of one of the horse's feet much corroded and eaten with disease, which he supposed, and said, were so injured by the nails used when shoeing the unfortunate beast, as if that was possible. To afford, then, some sort of guide to any one alleging that a horse sold to him as sound, is, or was not sound, it will be useful to consider from the symptoms, or from the statements of the veterinary

surgeon—is the disease one which constitutes unsoundness in law? and have there been any decisions to that effect in relation to such particular disease?

It may be taken for granted that most horses rejected for breach of warranty are so rejected because of lameness, and lameness arises from defects, diseases, or malformations of the feet or legs. As a rule a horse that is lame in its forelegs is injured in the feet, and if it is lame in the hind legs the cause is somewhere in the stifle joint or hock, the knee of the hind leg. The reason of this is obvious. If a gentleman uses a straight walking stick when going about his grounds, he will find the stick wear at the point, so the straight or foreleg of a horse wears at the point. If, however, a crooked stick, or one with a joint, is used, it will be observed to bend and give at the joint, leaving the point wholly unworn, and it is so with a horse's hind leg; the wearing and injury usually occur at the joint of that leg, the foot remaining uninjured. And it is well to remember this, because a person rejecting a horse for lameness should be able to say something, though not technically, of his reasons for doing so. To say that a horse is lame in his hind feet, but is sound on his forefeet, although possible, does not impress a jury of farmers as a common sense remark; they know, although they cannot tell why, that such a thing rarely happens—that if a horse goes sound in front and is lame behind, and the cause is in the foot, that it has been pinched in shoeing, or had a blow, or has

suffered some temporary injury there, which they will not look upon as unsoundness, but as an injury easily remedied, and arising from the buyer's own fault.

The common diseases of the foot in a horse, which are manifestly unsoundness, are corns, grogginess, or navicular disease; laminitis, or fever in the feet; thrush and contracted feet.

Corns.—These occur in a horse generally in the forefeet, in the sensible sole, between what is called the bar and the quarters, or nearly under the heel of the shoe. They have been held to be unsoundness in a horse, and if they cause, or are likely to cause, lameness, would be so; but if a horse's corn is carefully pared before it is sent for sale the corn will not affect the animal's action for many days, and will not be soon discovered. If a horse is suspected to have corns the foot should be pared in the heel or part mentioned, and if there is a corn there it will be seen by the redness of the horn, as if the blood was suffused. If the part is pinched, as all smiths know how to try a horse's feet, with a pair of pincers, the horse will at once wince. From such a corn a horse is likely to go lame at any time. A red or bruised appearance is not always a corn; a horse may tread on a sharp stone and bruise his feet, and become lame for a day or two, which will, however, go off, but the redness remain for many weeks. An accident of this kind is not at all unlikely to happen to a young horse bought at a fair, and should not be confounded with corns or other permanent injury to the sole of the foot. Corns may

be cured, if not of long standing, by great care in shoeing. If a corn has developed into quittor, or gathering and suppuration of the foot, it is not to be cured, and renders the horse unsound for life. This is sometimes called by grooms a "festering corn."

Navicular Disease or Grogginess.—This is another disease affecting the foot of the horse, and is so called because it arises from an injury to the navicular bone, a small bone in the foot of a horse above the frog. Strictly speaking this disease arises from inflammation of the synovial membrane, which covers the navicular bone. A horse with navicular disease is unquestionably unsound. The symptoms mostly are heat in the feet and lameness at starting to walk, with low action and wearing of the toe of foot. But the most remarkable symptom, perhaps, is pointing the toe—that is, the horse puts out the foot diseased in front of the other foot, and rests the leg on the heel. This is a disease which does not show so much when a horse has become slightly warm from exercise, and many a wretched poster will come lame out of the stable, and in a few miles warm up to comparatively sound action. This disease in a horse is called grogginess when it has so far developed as to cause the animal to knuckle over on the pastern joint, and to stand with a tottering or shaking movement; hence probably the term grogginess.

It is said that a horse can be cured of this complaint by severing the nerves of the foot, or what is called "nerving;" but although a horse, after such an

operation, will do light work well enough, it will be sure to break down if put to hard work, and a nerved horse is by decision held to be an unsound horse, nerving being an organic defect. See *Best* v. *Osborne* (R. & M., 290).

Laminitis, or Chronic Fever in the Feet.—This disease, as it alters the structure of a horse's foot, is undoubtedly unsoundness. Sometimes this defect is called chronic founder. Properly speaking, fever in the foot is the commencement of laminitis, which is, really, inflammation of the sensible laminæ, which connect the coffin bone with the crust of the foot. More horses are rejected as unsound on account of this disease than from any other cause, and not always with reason, as the developement of fever is very rapid. It happens that a horse is kept well to prepare the animal to go to a sale or fair. It is known that the majority of horse buyers think more of condition of flesh than of condition of muscle; so flesh is put on a horse before it goes for sale, by all sorts of food, at the expense of possible inflammation. Even dealers think a fat horse, with a sleek skin and a long tail, more worth looking at than another whose ribs may perhaps show, but whose crest and withers feel like real condition. The consequence is, many horses sent for sale are predisposed for fevers of all kinds. After standing about in rain or snow for hours, and after having been run up and down, as the saying is, they go to the buyer sound, but with the seeds of disease. Then the new owner cannot make too much of or

feed his purchase too well. In a few days, or perhaps next morning, the horse shows signs of inflammation in the feet. In such a case as this, it is probable that a disappointed buyer will fail to recover on alleged breach of warranty; it may be that disease is no fault of the seller, or, at all events, had care been taken, no fever would have come on. In most works on farriery a distinction is made with reference to laminitis, this complaint being divided into two stages and called acute laminitis and sub-acute laminitis; as a fact, acute laminitis is fever of a violent character in the feet of a horse—sub-acute is the chronic stage, and whether these can be cured or not is of little matter, for they detract from the natural usefulness of a horse, and are unsoundness. It is, however, material that a person before he goes to law, should consider the grounds on which he founds his complaint. If the disease has come on since the purchase, and from any of the causes above hinted at, he, as was said before, may fail to recover back his money from the seller; on the other hand, if the disease was of long standing, the horse has been sold unsound, and, if warranted, can be returned or the money recovered back. Assuming that such is the case, and a buyer thinks he has been defrauded or wronged, what are the symptoms we should look for as differing, although only in degree, from a disease contracted at the time of, or subsequent to, the sale? In the case of recent injury, not chronic, the animal may come into the

stable, looking fresh, and feed well; the hoofs will appear of the proper size and shape, and everything appear right until the morning after the new horse has come home; it will then be found with staring coat and eyes, resting the weight of the body on the heels of the feet and refusing food; or, probably, the animal will be lying down, especially if in a horse box, its sides will be heaving as if the wind was touched, and to the most inexperienced eye the horse will appear ill. These symptoms may also occur in a horse who has long had chronic laminitis; but there will generally be this great difference—the hoofs of a horse with chronic fever in the feet never remain shapely and open, but become contracted and narrow; often too, a horse with chronic foot fever has a bad thrush, or discharge from the centre, or split in the frog of the foot. Some hunters suffer after every hard day, more or less, from fever in the foot. An excellent Irish horse was ridden a long run with hounds, and the end of the run found horse and rider 25 miles from home. The horse, formerly ridden by a whip, came home at his own pace, which was the jog-trot at which hounds like to travel on the roads. On coming through the lodge of the owner, the animal appeared so fresh and well that he made a playful spring and lashed out at a boy who opened the gates, nearly unseating his rider; but as soon as the groom saw the animal's eye, he foretold that he would be down with foot fever before the morning, an opinion which was fully verified, and it was only by great care and watching that the horse

was brought round again. This horse was sound the day of the run, but was not in a condition to sell as sound the day after, although in a fortnight he had quite recovered.

In chronic laminitis, a horse is always dull and stiff at starting and first coming out of the stable. This lameness, or stiffness, will sometimes work off, but it will come on again with rest. The animal's appetite, however, is not so much impaired as in acute fever. This disease is not always easy to discover. Sometimes it will be days before even a veterinary surgeon finds out exactly the seat of the disease. It not unfrequently happens that a horse is bought in a fair or at a sale when warm, and shows no sign of lameness; the buyer takes it home and next morning finds his purchase lame; then any slight exercise, even the taking it to a veterinary surgeon, causes the lameness to pass off, and the buyer hesitates to return his bargain. May be that the horse, being equally lame on both fore-feet, does not show that drop which is the peculiarity of lameness in four-footed animals, and the buyer thinks he was mistaken and keeps the purchase a few days more. At last, he comes to the conclusion that the horse he has bought warranted as sound is unsound, and takes steps to get back his money when too late. It is a case of chronic laminitis; but the horse is rejected, after too long a delay, to obtain any remedy. The buyer of a horse with suspiciously contracted forefeet, or with a thrush, or with leather-

shod forefeet, should always require a warranty to last a fortnight.

Thrush is an offensive discharge from the cleft of the frog, which rots away the frog and causes the horse to feel tenderness when treading on a stone. It is produced by moisture and filth, and thus it is more common in the hind than the forefeet. Sometimes it is produced in the forefeet by contraction and fever in the feet. A horse with thrush is unsound.

Contraction of the Foot.—When this is sufficient to cause lameness in a horse the animal is unsound. It is in itself very often the result of unsoundness, more especially of fever in the feet. Rings in the hoofs are often supposed to be marks of unsoundness; they may be, but are not necessarily so. Rings come on horses hoofs in this way: when a horse is feverish in the feet or system, be the cause what it may, the hoof gets hot and dry and does not grow. As the fever lessens, or, as the body cools from other reasons, such as being turned out to grass, or a change from heating to cool food, the horn of the hoof will make a sudden start and grow very rapidly; and, if from any cause this growth is again stinted, a ring will be formed, more or less broad, as the growth has had more or less time to develope. It is surprising how the application of some unguents to a horse's hoof, combined with green food, will devolope the growth of horn. The well-known Hoplemuroma of Mr. Clark, commonly called "Hops" in stable parlance, if rubbed in to the coronet of a horse's hoofs regularly, will sometimes occasion so

rapid a growth of horn as to look like a diseased protuberance, while all the while the horse operated on is perfectly sound and improving in the feet. Rings are not, therefore, always signs of disease; still, as a rule, anything abnormal in the feet, such as a ring or a contracted castlehoof, indicates, more or less, disease or fever in the feet of long standing, and, if combined with lameness, may be distinctly classed as unsoundness. Some other defects and diseases of the feet are patent and visible to the eye of an ordinary observer, such as sandcrack and grease. There can be no concealment of either one or the other of these diseases; both may impair the natural usefulness of a horse, and, therefore, be unsoundness; but both can be cured, and are generally the result of low condition, caused by bad grooming and insufficient food. *Sandcrack* is a crack or split in the hoof of a horse, from the sole upwards, sometimes extending up the whole length of the hoof, from the sole to coronet. *Seedytoe* is another form of sandcrack, but comes on at the toes of the horse only, as its name indicates. No horse can be said to be sound with either one or the other of these defects, and it is only where a horse is bought on a warranty, without being seen, that questions are likely to arise in either of these diseases. *Falsequarter* is a term applied to sandcracks where they have been much developed; but, as a fact, it is not always due to that cause. A wound or injury to the coronet of the foot will occasion a disunion and a sore between the foot and the leg, so

that the foot is no longer of use in supporting the weight of the body. This, when it happens, lames a horse, and is necessarily unsoundness.

Grease is another disease affecting, generally, the heel of a horse's foot, and more usually the hind feet than the forefeet. Grease is often the result of neglect and dirt, but sometimes arises from overfeeding. It is generally preceded by swelled legs; after a while the heels become red and dry, the natural oiliness of the heel and of the skin under the pastern joint seem to dry up, and, unless attended to, the part ultimately becomes ulcerated and very painful when the horse moves. If a horse is bought with this disease on him and with a warranty of soundness, it can be returned; for although this disease can be easily cured, it is a serious detraction from the animal's utility until so cured. Grease is not always the result of neglect; an injury to the tender skin of a horse's heel will bring on inflammation and grease. One case, in which a hunter cut himself with a flint under the near hind pastern, turned to grease and took months to cure. Another case, where a four year old colt got his forefoot over the halter strap and chafed the skin under the pastern joint, resulted in such a bad attack of grease that it threw the colt out of work and blemished him for ever afterwards. Any natural malformation of the foot is not unsoundness; thus, some horses are very flat-footed, and thereby are bad travellers, and if they tread on a stone, go lame for a few steps. So, also, some

horses have very thin soles to their feet; if these are incautiously pared by a shoeing-smith, who is ignorant of the fact, or of his business, a horse may go very lame for awhile. A case of this kind was tried before Mr. Justice Cresswell (*Burley* v. *Forrest*, 2 C. & K., 131), where he pointed out to the jury that if this defect did not produce lameness at the time of sale, the peculiar formation—that is, thin soles—was no breach of the warranty that the horse was sound.

Diseases of a Horse's Legs.—The principal defects and diseases affecting a horse's legs are splints, spavins, and ringbone, swelling and strains of the tendons. Broken knees are more the effect of accidents than disease, but they undoubtedly are defects.

Ringbone is a disease mostly affecting the pastern joints of horses; it shows itself in an enlargement of those parts, and ultimately causes the whole leg, from the hoof to the knee, to appear as one piece without any joint, having no bend or flexion. This is necessarily unsoundness. Most horses employed about railways become badly affected with ringbone on the hind pasterns. The heavy coaches and trucks they are required to move, when making up a train, glide easily enough when once set going, but it strains horses fearfully to start them, and sooner or later destroys the horse's motion of the hind legs.

Splints.—A splint is a bony deposit or excrescence on the leg of a horse, between the knee and the pastern joint, sometimes on the splint bones, sometimes on that bone called a horse's cannon bone. A

horse with a splint may or may not be unsound, as the splint causes, or does not cause, or is not likely to cause lameness. If this bony deposit or lump is well forward out of the way of the tendons, and not near any joint, it will not affect a horse's action, and is not unsoundness. The cannon and splint bones of a horse are the same as the shin-bone of a man, and would appear to be very sensitive to injury or pain, so that a blow received by a hunter in going through instead of over a gate, or in touching the top stones of a wall, will often result in a splint that will in no way impair the animal's usefulness. Where, however, this bony lump occurs at the back or hind part of the bone, or near the joints of the leg, so as to interfere with a horse's action, then a splint is unquestionably a defect which is unsoundness. Splints are, with many horses, hereditary. In a part of the country where a thoroughbred horse with bad splints was much used, all his stock were liable to splints, and some foals even threw them out before they were broken. A splint, although well forward and out of the way of sinews and joints, may be unsoundness. A gentleman had a hunter, an excellent horse, but which was apt suddenly to fall dead lame. The veterinary surgeons were at a loss to find out what was the cause of this lameness, which did not continue for long, but spoilt many a run; for although the horse had a splint on the leg which gave out, it was so far forward as not to interfere with any tendons. It was suggested to the gentleman that

possibly the horse, when leg weary, struck the splint in his gallop with the other foot, and the pain caused the temporary lameness. After that the horse was ridden with a side boot on the splint, and although it never dropped quite so lame as before, it was no cure, and the way the boot wore showed the suggestion to have been correct. Such a splint would be unsoundness, as it would be a structural defect affecting the horse's action. Splints usually appear on the inside of the forelegs of a horse, and on the outside of the hind leg. Some veterinary surgeons attribute this to the fact that there are more veins and arteries on the inside of the foreleg and the outside of the hind leg, and that these defects follow the distribution of blood. This may be so, but it is also probable that blows or kicks in action, which certainly cause splints, are received more on the inside of the forelegs and outside of the hind. The leading case on splints on horses legs is *Margetson* v. *Wright* (7 Bingham, 603).

Spavins.—This term is applied to certain enlargements of the stifle or hock joint of a horse; a bone spavin is in reality a splint or excrescence on the splint bone of the hind leg. A spavined horse is said to be unsound whether the spavin cause lameness or not, and it was so held in *Watson* v. *Denton* (7 C. & P., 86); but it is doubtful if such would be held as good law now. Spavins do not always detract from the natural usefulness of a horse, which is, as has been often said in these pages, the test of soundness or otherwise. Many good racers and almost all seasoned hunters have

spavins, which neither detract from their speed or jumping qualities. A good judge will perhaps guess a horse is spavined by the action of the hind leg, even without feeling the hock, and on examination of the hind foot will find the toe unfairly worn, as is the case with spavined horses generally; but to an ordinary observer the action is all that is necessary or wanting. Still, if a spavin causes actual lameness, or makes the horse come stiff out of the stable, or when starting, especially if such a spavin be high up and near the joint, such a horse must be said to be unsound. Another defect in a horse, occasioned by spavin, when near the joint, is that the animal does not like to lie down. However diseased a horse may be in his forefeet, it will lie down and rest; but a horse with a stiff hock is afraid to rest on its side, the strain on the hock joint in rising, no doubt, occasioning great pain, and preventing the animal getting that relief which rolling and lying give. For this reason, a team of coach horses with diseased forefeet will do half as much work again as a team spavined and with stiff hind legs. The place to look for a spavin is inside the hock, and as many horses do not like a stranger fingering them about that part of the hind leg, a person wishing to satisfy himself that the animal he is rejecting really has a bone spavin, should have one of the horse's forefeet held up during the examination. There are other sorts of spavins called bog spavin and also blood spavin; these are not hard or bony excrescences, but look

like wind gulls or bladders, and are occasioned by hard work—such a defect is not unsoundness in itself; if a horse is lame from such a cause when sold with a warranty it would be, but many horses throw out these puffy excrescences both on the hind and fore-legs, without ever suffering any inconvenience from them.

Curb.—A curb is an enlargement or lump at the back of the hock of a horse, generally about three or four inches below the point of that joint. A horse with a curb is unsound, although not lame; in fact, many horses with curbs are not lame. If a horse is sold with a general warranty and has a curb, the animal can be returned to the seller. If the curb be pointed out at the time of sale it will be a special warranty, and the buyer must look out. It is seldom that both hocks of a horse are similarly curbed; if, therefore, the buyer stand at right angles to a horse behind and sees this swelling or enlargement, he should require a warranty against future lameness, within a reasonable period, as well as against present lameness. Veterinary surgeons call a certain kind of hock a curby hock, and allege that horses with hind legs of that character invariably throw out curbs at some time or other. In *Brown* v. *Elkington* (8 M. & W., 132), the plaintiff brought an action for breach of warranty on the ground that at the time of sale he objected to the horse's hocks as weak and as likely to throw out curbs. There was no special warranty given by the defendant, but a general warranty was

admitted. A few days after the sale the horse threw out a curb; there was no allegation of lameness, but the plaintiff relied on the scientific evidence of veterinary surgeons that curbs are unsoundness. The judge, in summing up, told the jury "that a defect in the form of a horse at the time of sale, although it might render the horse more liable to become lame at some future time, was not a breach of warranty," and on a new trial being applied for on the ground of misdirection, the court refused to grant it, and quoted *Dickenson* v. *Follett* (1 M. & Rob., 299), the judgment in which laid down that badness of shape was not unsoundness, so long as it was badness of shape only; where the shape produced an injury, then, and not till then, was the horse unsound.

This brings us to another defect in a horse caused by malformation, namely, *cutting or brushing the fetlock* joint of one leg by the shoe or foot of the other. This is sometimes caused by bad shoeing. The writer will never forget the satisfaction of a country smith on its being shown to him that if he pared the outside of a pony's hoof instead of the inside, so as to make the animal stand slightly bow or bandy-legged, the foot and shoe of the other leg would not touch it, and a bad cutter he quite cured.

Broken Knees of a horse are, as their name indicate, the result of an accident or fall, and when the knees are so badly broken as to allow the joint oil, called the synovial oil in farriery, to escape, the horse becomes unsound. Sometimes even when this is not the case

a horse cannot be said to be sound, because the action of the knees becomes impeded from the skin over the knees thickening. This, however, only occurs when a horse has fallen down very often, and, it may be said, that when that frequently happens, the knee joints get opened and the horse becomes radically unsound.

Broken Down.—A horse is said to have broken down when it has suffered such a strain on the sinews and tendons of the leg as to cause temporary lameness and swelling of those parts. If a horse ha recently broken down the injury cannot be concealed, because the part affected becomes very much swollen and inflamed; but, by careful fomenting, it is possible to reduce the swelling so as to conceal it from an ordinary observer. A broken down horse is decidedly unsound; any enlargement of the tendons must be a structural injury to a horse, and, more or less, impair his natural usefulness.

Stringhalt is a curious jerky action of the hind legs of a horse, which cannot be mistaken if once seen, and is incurable. A horse with this defect is unsound.

Diseases of the Body and Lungs.—It is not probable that many of the diseases of a horse's body will become the subject of dispute in case of a breach of warranty; for this reason, they are generally diseases which show themselves at once, and are of such a nature and character that no person of ordinary intelligence could help remarking them at time of sale or as soon as they saw the animal in question. For

instance, colic and gripes of the stomach are evidently so painful to a horse that it throws itself on the ground when attacked and rolls in agony, and so with other internal complaints of those organs. From this class, however, a distinction may be made in the case of *nephritis,* or inflammation of the kidneys, or any disease of the urinary organs. No animal is more subject to diseases of this class than the horse, and there are many reasons for it. The water given to horses is often drawn from all sort of sources rather than from a pond, the natural watering place of a horse. The hay used for horses is, as a rule, so mow-burnt, that the wonder is not that some horses are diseased in the kidneys, but that there are any horses without such disease. And so with corn,—there is no more prolific source of kidney disease in horses than bad oats. Add to this the habit grooms have of giving horses nitre and antimony, and the causes of this complaint can be easily understood. A horse with kidney disease is undoubtedly unsound. But unless a warranty with a horse extends for a longer period than usual, it will be difficult to ascertain the fact of such disease. Should any buyer of a horse think the animal he has bought suffers from any such complaint, he should take the advice of some really good veterinary surgeon before going to law about it. Nothing is more deceptive than disease of this nature; a few grains of nitre will for awhile relieve a horse badly attacked with chronic inflammation of the kidneys so that he may work on as accustomed to do for

months, if not years, and the evidence of disease be so unsatisfactory that a jury would not listen to it. On the other hand, a good veterinary surgeon will give his opinion on this immediately. Many a horse is found dead in the stable who was working the day before, and if the kidneys had been examined, the cause of death would have been very soon recognised, and surprise expressed that the animal lived and worked so long. *Diabetes, spasm of the neck of the bladder* and *cystitis,* or actual inflammation of the bladder, are by no means uncommon diseases of the riding horse. Most, if not all these complaints arise from the animal not having the opportunity, or not taking the opportunity to pass water, but by retaining it very often for hours after the desire to void it has arrived, bringing on one or other of these diseases. Cart horses, for obvious reasons, are seldom troubled by these complaints unless kept on mouldy hay or corn. If after a horse is purchased any suspicion of these diseases occur to the buyer, he should tell the groom to watch and call in a good veterinary surgeon to ascertain the fact, for these complaints are most subtle, and will spoil the best of horses.

Broken Wind is a term given to a disease of the horse affecting the air cells of the lungs and the intestines generally. It is, unquestionably, unsoundness. There are different stages of broken wind, but any groom or person experienced in horseflesh knows the disease at once. It is not always easy to detect this from watching a horse's flank when it is in

its early stages; but there are one or two other symptoms which, combined with a heaving action of the flank, may be taken as fair indications of broken wind—one is a peculiar cough, especially if after drinking; another, that the horse when eating its corn and chaff, never clears its nose. If a sound horse is listened to in the stable, it will be heard constantly clearing its nose with a sort of snorting sound, to get rid both of the dust, hay seeds, and other light particles flying about. A horse slightly broken-winded, touched in the wind as the saying is, may do this; but if it does not do it, the animal may be put down at once as so diseased. It is said that dealers are able to give horses something that will temporarily relieve a horse with broken wind, and so enable them to sell and get rid of them to the unwary; and this is very possible, for a horse on grass will not show broken wind in anything like the same degree as it will if kept in a stable; still, this is a disease which is at once recognised by an expert. Pinching a horse in the gullet and making him cough is no test of broken wind. The soundest colt bred will cough if half throttled, and so, probably, would a man also. Broken wind is unknown among horses in India.

Coughs.—Horses are very subject to coughs, whether arising from inflammation in the head and throat, or from the lungs, or when the seat of disease is broken wind. A horse with a cough is unsound. In *Bolden* v. *Brogden*, a different doctrine was laid down, and for some time it was held as law that if

a horse suffered from a temporary injury, as in this case, only, such as a cough, it was not unsoundness; but since Baron Parkes' direction to the jury in *Coates* v. *Stephen* (2 M. & Rob., 157), it has been held otherwise, and this is to be noted because from the evidence it would appear that the cough, which was the alleged breach of warranty in that case, had been cured before trial. A cough is a disease which need not be described, its symptoms are plain enough; but a person dissatisfied with a bargain he has made in horseflesh should bear in mind that a cough may be contracted by a horse in a few hours after the time of sale, for, as has been before stated, the place and conditions of the localities where horses are often sold, are provocatives of inflammation and colds. Some horses, especially nervous animals, always catch a cold if they are a night away from their own box.

Roaring and Whistling are diseases of horses generally the result of a cough or cold. The noise made by animals affected with these complaints is caused by a contraction of the larynx and windpipe, after strangles or bronchitis, influenza, or such like ills of horseflesh. Some old cases in the law books are quoted to show that roaring is not unsoundness, but it is submitted that these decisions are not in accordance with common sense. A roarer is not to be depended on, its structure is injured more or less, and no persons know this better than racing men. If a Derby favourite is heard to make a noise, it goes back in the betting at once. It is known the animal is

suffering from structural injury, and, as has been repeatedly shown before, that is a certain test of unsoundness. On this defect the case of *Onslow* v. *Eames* (2 Stark., N. P., C. 81) should be read, where it was decided that roaring was a malady which rendered a horse less serviceable for a permanency, and, therefore, unsound. This decision was qualified in *Bussett* v. *Collis* (2 Camp., 522), but the latter case is bad law.

Diseases of the Head and Throat.—In treating of broken wind, reference was made to coughs. These may proceed from the lungs or intestines, as in broken wind, or from the throat, as in bronchitis, and it will not be necessary to say anything further here respecting coughs than that they are unsoundness. The principal disease affecting a horse's head are glanders, strangles, influenza, catarrh, and blindness.

Glanders are, of course, unsoundness. The symptoms in the advanced stage are unmistakeable. The disease is incurable; but sometimes a horse is alleged to be glandered when it is only suffering from strangles or catarrh. A horse does not become glandered in a few hours, that is, with the disease fully developed; the complaint is one that takes some time to come out. If, however, a buyer finds his purchase running at the nose with that peculiar discharge which a farrier tells him is glanders, he should take steps to rescind the bargain and get his money back. A person with a glandered horse should not attempt to re-sell it; when the animal is pronounced to have this disease it must

be destroyed, and the buyer can recover the full price, and, possibly, damages also from the seller, if it can be proved that the latter knew, or ought to have known, the horse he was selling had this fatal complaint.

STRANGLES are a disease common to all horses, especially young animals, and is often mistaken for glanders. To the inexpert the symptoms are the same, but more violent in strangles while they last. The horse appears to have a bad cold, its head and throat swell, and after awhile a copious discharge takes place from the nostrils. It is sometimes difficult to get a young horse in condition before it has had strangles, at least, in the same condition as after strangles. It would appear as if this complaint carried off some virus in the system, and is a great relief to young horses. A horse with strangles is unsound; but it is a complaint which comes on very suddenly, and the same circumstances which give a horse a cough or cold at, or just before, the time of sale, are likely enough to bring on strangles. If a purchaser thinks the animal he has bought has strangles, he should consider well what he does. In more than one case, which has come under the observation of the writer, a young horse has been sold sound, that is, with no cough or cold out, and taken to the home of his new master; when there, strangles have come on, which would have have been easily got over had the animal been properly nursed and fairly treated; but, owing to the disputes usually arising out of such a circumstance, the horse has been neglected, and that

which would have been the means of relieving the animal's system and perhaps curing it of incipient blindness, has, unhappily, by neglect, turned into chronic cough or indigestion, and perhaps total blindness. No persons know better than farmers, of the class who compose juries, the symptoms of strangles, and they are not disposed to lean towards anyone who loses a young horse in this complaint, and who sticks too closely to a warranty under such a state of circumstances. Still, just as has been said of a temporary cough, so it must be said of strangles—they are both unsoundness, only a complainant should be cautious in dealing with a case of warranty where the alleged breach is certainly strangles.

Blindness.—All affections of the eyes, which detract from their normal state and make a horse more or less blind, are unsoundness.

Vice.—A horse is said to be vicious when it has a *dangerously* bad habit, that is, dangerous to those who have to do with the animal, or dangerous to itself. Rearing, kicking, and biting are manifestly vices, as they are dangerous to persons who have to attend to a horse; so, too, jibbing and running away are vices, if habitual. Some people class rolling in the stable, turning round in the stall, and such like proceedings of a horse as vices; but it would be difficult to persuade a jury that they were dangerous or injurious habits, and, therefore, they will not be here put down in that category. *Crib-biting* and gnawing the manger are bad habits, and are sometimes classed as vices, as

they are supposed to injure the horse itself. If they do so they are unsoundness, because anything which renders a horse less useful than nature suggests, is unsoundness.

There are many other diseases and defects in horses than those before enumerated; but, practically, it will be found that the diseases and defects mentioned in the foregoing pages are the diseases in ninety-nine cases out of a hundred which form the cause of dispute in buying or selling horses. In all diseases of dumb animals, a great difficulty must occur from their not being able to tell the tale of their own symptoms; but farriery or the veterinary art has of late years so much developed, that a complainant should have no difficulty in procuring evidence to tell a judge or jury what is the matter with the horse he would reject, and in offering a comparison between the symptoms of disease in the object under dispute and the diseases of other horses which have been subject to judicial decisions, and where such diseases have been held to be unsoundness.

CHAPTER IV.

Contents :—How to Proceed in a County Court in case of Dispute in a Horse Deal. Where to take out the Summons. Example of Particulars of Claim. Production of Documents. Interrogatories, what they are. Conclusion.

Procedure in the County Court.—The preceding chapters of this work have been devoted to an exposition of the law respecting the warranty of horses. It is now proposed shortly to state the best method to proceed in County Courts, where a person having bought a horse afterwards finds it not up to the warranty given, or to the representations made respecting it. If the horse which has been purchased is very valuable, the probabilities are that some solicitor will be employed for the person disputing the bargain, and, in that case, most likely the litigation will take place in the superior courts; but as one of the great sources of litigation in rural County Courts are disputes respecting horses of a comparatively small value, it is hoped that this chapter may be of use.

If, then, a person has bought a horse for any sum of money less than £50—which is the highest sum that

in a dispute of this kind can be referred to a County Court—and, when this horse was sold to him, was sold with a warranty, but on inspection and trial has been found not to be of the nature and character stated, and the buyer wishes to rescind the bargain; the first step taken should be to call in an experienced veterinary surgeon, and to obtain from him a certificate of the animal's unsoundness (if that is the point with which the buyer is dissatisfied); or, if the complaint is that the animal does not come up to the warranty and statements of the seller in other respects—as, for instance, if the horse was warranted free from vice, or to be quiet to ride and drive, and proves to be vicious or restive—then to take the opinion of some authority, such as an experienced coachman or stud groom, with respect to the horse's vice or restiveness, and, if possible, to get that opinion set out in a written report. This being done, the buyer should at once either write and inform the seller that the animal is not as warranted, or send the horse back to him, if he can, with a copy of the certificate or report; or, if no note or writing can be got from experts, as above suggested, then with a letter from the buyer demanding back his money. The buyer can, also, demand payment of such a reasonable sum of money as may be sufficient to cover the expenses incurred owing to the alleged breach of contract.* If the seller refuses

* If the purchaser sue upon the warranty he need not return the article bought, but the better course to adopt is that recommended at page 27, *ante*.

to take back the horse the buyer should then take prompt steps to sell the animal by auction, giving due publicity to the sale, and then sue the seller for the difference between the amount received on the sale of the horse (having first deducted all fair expenses incident to the sale, &c.,) and the price actually paid in the first instance for it. If any correspondence takes place care should be had that all letters received be kept and also copies of all letters sent, as their production at the trial may help the Court in coming to a decision.

It is of moment to remember that if the buyer finds out that the horse he has bought is not what he considers he really should have got for his money, he should use proper diligence, as soon as he is certain that he has been wronged, in returning the horse to the seller, or in informing the seller that he had determined to rescind the sale,* because if any article bought is not what the buyer expected or wanted and he has been induced to purchase it through fraud or misrepresentation, the buyer is bound to return it or point out the defects as soon as possible. Much more is this the case in the purchase of live animals. A horse may catch a sudden cold or fever in the feet and become ill or go lame in a very few hours. To protect themselves against horses being returned after a certain lapse of time many large sellers, such as Messrs.

* A warranted horse, if rejected, should be returned in reasonable time. Buller, Justice, in 1 T. R., 136, *Adams* v. *Richards*, 2 H. Bl., 573, *Street* v. *Blay*, 2 B. & Ad., 456.

Tattersall, require the horse, if objected to, to be returned within a specified number of days. When a horse was sold with a warranty by private sale, at a repository for the sale of horses, where the terms of the sale were painted upon a board fixed in a conspicuous position, a purchaser must be taken to be cognisant of these terms, though nothing is said respecting them at the time of sale, and if one of the terms is that the horse, being found to be unsound, must be returned within twenty-four hours, it must be complied with, though the unsoundness is of such a nature as may not be discovered within that time (*Bywater* v. *Richardson*, 1 Ad. & E., 508). No exact rule can be laid down as to within how many days the return should take place. In country places a veterinary surgeon may not be immediately at hand, or other unavoidable hindrances may occur. Generally, it may be said that where a buyer objects to a horse he has purchased, he should notify such objection to the seller within eight days inclusive.*

Assuming, then, this and the other steps before mentioned to have been taken, and that the party complaining does not know how to bring complaint in the County Court, and does not wish to employ a solicitor, let us consider how he should proceed.

---

* Whatever may be the right of the purchaser to return a warranted article, he cannot do so if he has done more than was consistent with the purpose of trial (*Street* v. *Blay*, 2 B. & Ad., 456; *Chapman* v. *Gwyther*, 1 L. R., Q. B., 463). See also, on this, remarks of Baron Bramwell in *Head* v. *Tattersall*, page 9, *ante*.

His best plan will be to enquire from the officers of the County Court of the district in which he resides what to do, and they will give him every information, and will show him how to bring his action; they will also tell him the day and hour on which the action will be tried. Before the complainant goes to the County Court office to lodge his plaint, he should commit to writing the particulars of his claim, for it is part of the statute law affecting County Courts, that all claims of forty shillings* and upwards shall be explained by the complainant, adding thereto particulars, that is, by setting out in detail the several items constituting his claim. The claim then in this case we will suppose to be particularised in some such way, as thus:—

BROWN, plaintiff, *versus* SMITH, defendant.

The plaintiff claims from the defendant the sum of £25 10s. 0d., on a breach of warranty, of which the following are the particulars:—

January, 1877.

Cash paid defendant for brown horse					£40 0 0
Horse sold at Lewes market on Feb. 10th for			£17 0 0		
Deduct eight days' keep ...	£1 4 0				
Veterinary Surgeon's Certificate	1 1 0				
Postage and other sums out of pocket	0 5 0				
			2 10 0		
					14 10 0
					£25 10 0

* Consolidated Orders, 1875, order vii., 1.

The complainant should take three copies of these particulars, one he should keep for his own guidance, one other will be annexed to the summons* served on the defendant, and the third will be attached to the plaint filed in the court, and will be for the use of the judge who tries the case. It can readily be understood how important it is that these particulars should state the items of the demand in plain and simple terms. At the same time the complainant hands in these particulars, he should consider whether he requires his opponent to produce or show any letters which may have been written to him, and if he thinks such letters will be of value, he should give notice to the opposing party to produce them. As a rule, it is always wiser to give an opponent notice to produce all documents.† These preliminaries being arranged, the complainant should consider what evidence and witnesses will be required to substantiate his claim, and if he thinks there are any who will not attend at the court voluntarily, he can enforce their attendance by a subpœna. The officers of the Court will serve this if the address of the person wanted is given. The day for hearing the case having arrived, and the parties in court, the complainant should have arranged in his mind the way he is going to tell his story. In courts of justice there is nothing like bringing the facts forward step by step. Many

* Con. Order, 1875, order ii., 7.

† Cond. Order, 1875, order xiii., 1.

plaintiffs think because they know all about it, therefore, the judge does, and commence where they should end. In a dispute of the nature we are now supposing, the complainant should first say that wanting a horse he went to a fair, or to the defendant's stable, as the case may be, that he was shown a horse, that the price agreed on was £40, and that before he finally agreed to buy it he requested the defendant to warrant, which the defendant did in the manner and form in which the complainant alleged he did.

If there has been a written warranty the proof will be easy enough; because, as was said in a previous chapter, the decision of the court will depend upon the terms of the warranty, as expressed in writing,* and the first really important step for the complainant to take in court will be to show that the warranty was written or made by the seller or his agent or servant. This can be done by the evidence of the person who saw the warranty written out, or who received it from the seller. In like manner, if the warranty given was by word of mouth, the complainant must prove that the horse was warranted to himself or his agent or servant, before the bargain was struck and the horse sold —he then should prove payment of the price. The complainant should be very careful to be accurate in giving his evidence respecting the warranty, and to repeat the precise words used by the seller, for as has been shown before, there may be expressions which

* This need not be stamped, *Skinner* v. *Elmore*, 2 Camp., 407.

only amount to a representation and not to a warranty. A man may commend his goods as he pleases, and has a right fairly to puff them, whether a horse or other chattel; he may, in short, praise them as he likes so that he does not induce another person to buy by some statement of an alleged fact, which is untrue, and goes to the root of the bargain.

The next step will be to prove the breach of warranty, that is, that the horse was, at the time of sale, unsound, or vicious, or restive, or was not as stated in the written warranty, or, as the complainant alleges, the seller told him when he bought the animal. To do this he must call as a witness the veterinary surgeon, coachman, or whomsoever it is he relies on, who saw the horse in dispute soon after it was bought, and get such witness to give his testimony respecting the animal's unsoundness, vice, or restiveness, as the case may be. The certificate or written opinion of anyone is of no use in court, except to correct evidence; it can be objected to if by itself for many reasons, if for no other because the person giving it has not been cross-examined. If anyone gives an opinion which should influence a court of justice, he ought to be required to give it so as to be cross-examined upon it, and thus have the value of his evidence tested. After the veterinary surgeon or other authority has been examined, then the complainant should bring forward his evidence as to the price the horse sold for by auction, the expense he was put to in keeping the animal, and generally as to all the other items which

make up his claim. If he can bring any witnesses to prove that the other side knew that the horse was not of the character or quality warranted; for instance, if the horse is found to be lame, anyone to whom the defendant or seller complained of the horse's previous lameness, would be an invaluable witness; or if it is found to be vicious, the evidence of any person to whom the defendant has admitted the vice while he owned the horse, or who has seen it do vicious acts when the defendant was present, because such evidence would be almost conclusive of fraud, and fraud, as lawyers say, vitiates everything, and proof of it will rescind any sale whether there has been a warranty or not. After the plaintiff and his witnesses have finished their account of the transaction, the defendant is entitled to tell the court his version of the affair, and call his witnesses to rebut or deny the account given by the plaintiff, and, finally, the plaintiff may address the judge or the jury if there is one on the whole case; but nothing said by any advocate can make up for careful preparation of the evidence to be given, and an accurate and truthful method of telling the story. After judgment is given, if the complainant recovers more than £20, he will have costs as a matter of course;* but if he recovers a less sum than that he should apply to the judge for his costs and the expenses of his witnesses.

These remarks are intended to be of service to

---

* 30 and 31 Vict., cap. 142, s. 5.

defendants as well as plaintiffs in such like case, for it is evident that if a certain line of conduct is followed by the plaintiff, an opposite but similar line of defence should be followed by defendant.

If a written warranty is given, the only defence would be, either that the animal is still, or was, when action brought, in the same state or condition as it was when warranted by the document given, or that the breach of the warranty is the complainant's own fault; for instance, a horse may, immediately after being bought, be shod and thereby lamed, or it may be put in a conveyance with harness too small or improperly fitting, or the vice alleged may be brought about by fault of the buyer. If the warranty is not in writing and the defendant denies it, he should bring evidence to show exactly what was said; but the complainant must make out his own case first. The defendant will not be required to prove he did not warrant until the complainant has made out a case showing that he did do so. Again, the defendant may show that the horse was not returned to him in due time, or that the sale by auction was not properly conducted, or not published, or, as before said, that there has been no breach of the warranty, that, in fact, the horse was sound when sold, or was quiet or free from vice or disease. In all these cases, whether on the part of the plaintiff or defendant, a simple statement of facts will be better than any technical or laboured address. County Court judges have ordinarily so short a time to dispose of cases, that when horse cases do arise, the

man who tells his story in the most simple and straightforward manner is more likely to be listened to.

If a party seeks to recover more than £20 from his opponent, either side is allowed, whether plaintiff or defendant, in an action in the County Court (and it should be again noted that the remarks contained in this chapter will apply to either character), to administer interrogatories,* or, in other words, to question the other side as to the nature or reality of the bargain on any circumstance connected with the bargain or sale in dispute. For instance, let us suppose a person to have bought a horse from another, which, among other things, was warranted to be quiet in harness, and the animal is found after purchase to be restive and a kicker; in that case the buyer might interrogate the seller, and ask how long he had had the horse? whether he had ever put it in harness? whether he ever knew or heard of its kicking in harness before? and such like questions, which the seller would be obliged to answer on oath, and which would bind him to a certain statement from which he could not depart in court without materially damaging his side of the case before the judge. Interrogatories of this character can be taken out in the County Court in all cases, however small the sum; but as the costs of them are only allowed in cases above £20, it is not likely they will be taken out where the sum in dispute is of lesser value. The officers of the court

* Consd. Order, 1875, order xiii., 6.

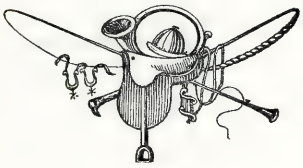
will show the complainant how to manage this (supposing him not to employ a solicitor), and the desirability of obtaining some such clue to the defence or case likely to be set up, is too plain to require further comment.

In horse cases the evidence will generally be conflicting, one party directly contradicting the other, not because necessarily one party is telling an untruth, but because from the nature of the case two persons will look at the same animal from a totally different point of view, one thinking much of a good old servant or a favourite colt, until it has become a perfect quadruped in his eyes; the other, looking at the money he has parted with and expecting his full money's worth, if not more, for the price he is giving. At the same time there is something about horse dealing which has a debasing influence on many who have much to do with it, and Englishmen all over the world are supposed or suspected to be quite knowing enough on the subject. The motto on the title page of this work, taken from a letter of Cicero written many hundred years ago, may be freely translated thus: "You who think yourselves very clever, take care you are not done by British horse dealers;" from which it would appear that, even in those days, Englishmen had the character of sharpness in horse dealing, and that, moreover, this sharpness was not lessened by an over-abundance of means may also be inferred by another passage from the next letter of the same classic writer to the same person, where

he says, in effect, "they are badly off in England." "*In Britanniâ nihil esse audio, neque auri neque argenti,*" a state not unknown to many rural horse dealers of the present day. Oddly enough, the best horses now driven in Rome are supplied by English dealers. It may then be taken for granted that from one cause or another the stories told by each party in a horse case are nearly certain to be contradictory, and although a judge may wish to avoid the responsibility of saying which story is the true one, as a rule it will be better to have horse cases tried by the judge of the court and not by a jury, or, if it were possible, by a judge and two assessors, who know something about horses. A County Court jury only consists of five men; there are few Englishmen who do not think they know all about horses, and amongst the five it is safe to say there will be one such man who will try to lead his brethren and get them to adopt his view. In the conflict of evidence usual in horse cases, it requires a mind trained to weighing evidence to discriminate between the true and false story. Juries of twelve are in this respect better than juries of five, for the former are less liable to be led by one man or to form hasty opinions; they take their cue in looking at the evidence from the judge's summing up, and, on consultation, usually come to a right conclusion on all simple questions of fact.

But whether the case is tried by a judge alone or before a jury, the class of evidence and the mode of procedure before advised will be the same. In all

cases before the court, accuracy of statement and simple versions are most important; but more especially is this so in horse cases. The advice then offered to complainants is to tell their story quietly and plainly, speaking out distinctly but not noisily, and if they will take the testimony of the writer of these pages, who has had some experience, they will obtain, if wronged, full justice and redress in a County Court, and none the less acceptable because it will be speedy justice.



INDEX.

H. J. INFIELD, "Sussex Daily News" Office, North Street, Brighton.